UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

January 28, 2005

Mr. Thomas E. Irwin, Commissioner
Alaska Department of Natural Resources
550 West 7th Avenue, Suite 1400
Anchorage, Alaska 99501-3650

Dear Commissioner Irwin:

Thank you for submitting the revised proposed Alaska Coastal Management Program (ACMP) document, received on December 17, 2004, for consideration as a program amendment under the Coastal Zone Management Act (CZMA) (December 17 ACMP Document). Since receipt of the December 17 ACMP Document, the Office of Ocean and Coastal Resource Management (OCRM) and Alaska Department of Natural Resources (DNR) staff have worked together and made significant progress in addressing several issues regarding the approval of the ACMP amendment. This letter, with enclosures, provides further comments regarding: your December 16, 2004, letter; CZMA approval issues; and scheduling/timing issues. OCRM is committed to working with the state to meet the objectives of Alaska House Bill 191 (HB 191) and the CZMA.

Alaska's December 16, 2004, Letter

I would like to briefly clarify some of the process issues concerning OCRM's preliminary approval decision raised in your December 16, 2004, letter. Alaska's first program amendment submission, dated September 30, 2004, was received in OCRM on October 5, 2004, and is referred to in OCRM's administrative record as the October 5 ACMP Document. Alaska's second program amendment submission, dated December 16, 2004, was received on December 17, 2004, and is referred to in OCRM's administrative record as the December 17 ACMP Document. On October 8, 2004, OCRM determined that the October 5 ACMP Document was insufficient. OCRM's letter dated November 4, 2004, provided Alaska with detailed comments and required improvements. Notwithstanding the October 8 determination of insufficiency, based on assurances from Alaska of timely resubmission of an improved amendment, on November 4, 2004, OCRM started the 120-day amendment approval time period in accordance with CZMA section 306(e).

As stated in OCRM's November 4, 2004, letter, OCRM continues to work diligently to collect information and data necessary to comply with the National Environmental Policy Act (NEPA). After the state submits to OCRM an ACMP document that resolves the issues identified in this letter and enclosures and proposed regulations revising the ACMP as recommended in this letter, OCRM will be able to begin the NEPA scoping process. After Alaska holds a public hearing on the ACMP amendment pursuant to CZMA section 306(d)(4) (that can be held in conjunction with OCRM's NEPA scoping meeting), OCRM will be in a position to make a preliminary approval decision and provide a more certain schedule to complete the NEPA process, pursuant to 15 CFR § 923.82(c). Therefore, pursuant to CZMA section 306(e)(2) (16 USC 1455(e)(2)), OCRM extends the ACMP amendment review period until the NEPA process is complete and its final record of decision on the ACMP program amendment request is issued.

CZMA Approval Issues

The enclosures provide detailed explanations of the remaining approval issues, briefly described below. OCRM must be satisfied that the state has addressed these issues before OCRM can initiate the NEPA process or make a preliminary approval decision.

1. **Application of District Policies and Designated Areas.** Revisions must be made to ACMP regulations or the ACMP document to address CZMA approval issues concerning the following policies or policy areas: subsistence use policy; natural hazards area policy; important habitat policy; recreational use areas; tourism use areas; commercial fishing and seafood processing facilities sites; major energy facilities sites policy; and the important history or prehistory areas.

   OCRM proposes these changes to ensure the ACMP regulations comply with the objectives of the CZMA and apply the federal consistency requirement to designated areas. The ACMP must address effects to those uses and resources identified by the ACMP and not be limited to the location of a project. *See e.g.*, 16 USC §§ 1452(2)(A), (C), (J), 1452(4), 1452(6), 1456(c)(1) and 1456(c)(3)(A); 15 CFR §§ 923.3(b), 923.11(b), and 15 CFR part 930. Enclosures I and III discusses this concern in detail.

2. **Compliance with Local Government Implementation Requirements - Technique A.** The ACMP as drafted does not comply with two of the five Technique A requirements for district implementation of ACMP policies. (When a state chooses to implement part of its coastal management program through local government implementation, the state must meet five requirements to ensure the local plans are enforced, under "Technique A" regulations at 15 CFR § 923.42.) The state is not able to assure that coastal management decisions will comply with ACMP enforceable policies during the development of local programs, pursuant to 15 CFR § 923.42(b)(2). Also, the state is not able to assure that coastal management decisions will comply with ACMP enforceable policies if a district fails to adopt a plan, pursuant to 15 CFR § 923.42(b)(3). Enclosure II discusses this concern in detail.

3. **Scope and Content of District Plans.** The ACMP does not clearly articulate the new role for district programs. The regulations and ACMP document must provide clear guidance to the districts and other affected interests on the scope and content of district programs and policies, including the "flow from" principle in 11 AAC 114.270(a)(1), which plays an important role in describing the parameters of district policies. The ACMP should consult with OCRM, districts, and other affected parties as part of any effort to amend this rule. A key program approvability requirement is that state coastal programs must provide a "clear understanding of the content of the program, especially in identifying who will be affected . . . ," and a "clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program." 15 CFR § 923.3(e)(1) and (2). Enclosure IV discusses this concern in detail.

4. **Habitats Policy.** The ACMP habitats policy at 11 AAC 112.300 does not include clear mechanisms for the comprehensive management of fish and wildlife habitat, including the resolution of conflicts among competing uses of habitat. First, the standards proposed in the first part of the policy do not address impacts to the biological and other functions of habitat, and they apply only to specified geographic locations. Second, the criteria for designation of "important

habitat" areas to which broader habitat standards may apply lacks clarity, definition, and consistency with accepted scientific terminology and concepts. Changes are needed to comply with CZMA requirements including the scope of state enforceable policies. *See* 16 USC § 1452(2)(A), and 15 CFR §§ 923.3(b), 923.3(c), 923.3(d) and (e), and 923.40. Enclosure V discusses the habitat issues in detail.

Scheduling/Timing Issues

With respect to scheduling issues, it is important to have a mutual understanding of the effect of the July 1, 2005, deadline established by HB 191. We would like to summarize our understanding of the deadline. A detailed discussion of the deadline and possible alternatives is contained in Enclosure VIII, as well as a tentative schedule for completing the ACMP amendment approval process.

OCRM understands that DNR has concluded that if OCRM has not approved the ACMP amendment by July 1, 2005, the state will have no enforceable ACMP standards, because the old ACMP standards (6 AAC 80) will no longer be effective and the new ACMP standards (11 AAC 112) will not be effective until approved by OCRM. Therefore, after July 1, 2005, the federally approved ACMP would consist of only the district plans and district enforceable policies already approved by OCRM. While the ACMP amendment is in transition toward approval, OCRM believes the ACMP could continue to receive CZMA grants, fund efforts to revise the ACMP and district plans, and use the districts' enforceable policies for state and federal consistency reviews.

While both OCRM and DNR have worked diligently and made significant strides to complete review of the ACMP amendment, OCRM will not, despite its best efforts, be able to complete its review and NEPA analysis by July 1, 2005. The magnitude of the changes proposed for the ACMP regulations, the necessity to develop a revised program document, and the absence of complete district plan guidance raise significant CZMA approvability and NEPA issues. These issues are not easily addressed within the compressed time period established by state law. In fact, OCRM has not been able to issue preliminary approval or initiate the NEPA process because the proposed ACMP revisions and explanations are still in a state of flux. I am pleased, however, that there appears to be agreement between our offices that DNR will further amend the ACMP regulations to address some of the CZMA approval issues.

In addition, while DNR has provided opportunities for district and public input, OCRM believes that our combined efforts to meet the July 1, 2005, deadline, have limited the ability to have a broader dialogue between DNR, the districts and other affected parties on the content and scope of the new ACMP. As a result, district and public understanding of the proposed ACMP has suffered. Of particular concern is the difficulty districts have encountered in their efforts to revise district plans to meet the deadline. The state and OCRM need to agree on tasks and a process leading to ACMP approval and then set revised goals and deadlines. Assuming DNR submits the proposed regulatory changes and revised ACMP document, as described in this letter and enclosures, in February, OCRM anticipates a program amendment decision date around December 31, 2005.

In order to address these timing concerns, OCRM recommends that the state continue to rely on the old ACMP regulations previously approved by OCRM, and not just district plans and policies, during completion of the ACMP amendment approval process. This would require the state legislature to either remove or extend the July 1, 2005, deadline in HB 191, Sec. 49. OCRM also recommends that the statutory deadline for submitting district plans be extended until the final ACMP approval requirements

have been completed, pursuant to HB 191, Sec. 47(a), so that districts and other affected parties clearly understand the districts' role.

Another issue related to scheduling matters is the state's question of whether OCRM can grant "interim" or "conditional" approval of the ACMP while the ACMP amendment is being processed. As discussed with DNR staff, OCRM may not grant interim or conditional approval. The CZMA does not provide authority to grant an interim or conditional approval of a coastal management program or an amendment to a program. Instead, the CZMA provides specific authority for "preliminary approval" of program amendments. The effect of preliminary approval is to allow the continued use of CZMA funds to implement the proposed amendment during the CZMA approval process, but for no longer than six months. The CZMA authorizes a preliminary approval when OCRM determines the amendment "is likely to meet the approval standards in this section [306(d)] . . . ." 16 USC § 1455(e). Finally, the CZMA provides certainty to federal agencies and other affected interests by not authorizing an amendment that has received preliminary approval to be used for federal consistency purposes.

Conclusion

Although the December 17 ACMP Document is improved in many ways over the earlier submission, revisions are still needed to provide a sufficient description of the ACMP so that affected parties can determine the nature and scope of the changes to the program. Until such revisions are made, OCRM is unable to either provide preliminary approval or begin its NEPA review process. To address deficiencies within the existing document, OCRM offers specific guidance as described in the enclosures. Additionally, OCRM urges the State to take necessary action in addressing the July 1, 2005, deadline, in order to both ensure continuity of Alaska's existing program and sufficient time to carefully and comprehensively review the state's program amendment submission.

We look forward to continue working with your staff on this amendment request. Please contact me or Bill Millhouser, at 301-713-3155, extension 189, if you have any questions.

Sincerely,

Eldon Hout
Director

Enclosures
cc: Bill Jeffress, Director, OPMP
Randy Bates, ACMP Program Manager
John Katz, Alaska Washington, D.C. office
State Representative Paul Seaton

ENCLOSURES TO OCRM'S JANUARY 28, 2005, LETTER TO ALASKA REGARDING ALASKA'S PROPOSED ACMP

The enclosures below are part of OCRM's January 28, 2005, letter to the Alaska Department of Natural Resources and provide detailed comments on various aspects of the December 17 ACMP Document. The comments in these enclosures relate to CZMA approvability issues, the need for more detailed information, and improved clarity and transparency in the revised ACMP. The enclosures include the following:

ENCLOSURE I PROPOSED REVISIONS RELATED TO DISTRICT DESIGNATED AREAS
- A. SUBSISTENCE USE POLICY
- B. NATURAL HAZARDS AREA POLICY
- C. IMPORTANT HABITAT POLICY
- D. RECREATIONAL USE AREAS, TOURISM USE AREAS, COMMERCIAL FISHING AND SEAFOOD PROCESSING FACILITIES SITES, MAJOR ENERGY FACILITIES SITES POLICY, AND THE IMPORTANT HISTORY OR PREHISTORY AREAS
- E. OTHER CHANGES TO ACMP DOCUMENT

ENCLOSURE II ENFORCEABLE POLICIES AND IMPLEMENTATION TECHNIQUE A AND B

ENCLOSURE III APPLICATION OF SUBSISTENCE USE POLICY TO OTHER DISTRICT, STATE AND FEDERAL LANDS AND WATERS – Includes Charts 1, 2, 3, 4 & 5

ENCLOSURE IV SCOPE AND CONTENT OF COASTAL DISTRICT PROGRAMS

ENCLOSURE V HABITAT MANAGEMENT MECHANISMS

ENCLOSURE VI GUIDANCE FOR COMPLETING THE ACMP AMENDMENT REQUEST
This enclosure is the matrix enclosed with OCRM's November 4, 2004, letter to Alaska, updated by review of the December 17 ACMP Document

ENCLOSURE VII APPROVAL CRITERIA FOR OCRM'S REVIEW OF THE ACMP AMENDMENT REQUEST
This enclosure is the matrix enclosed with OCRM's November 4, 2004, letter to Alaska, updated by review of the December 17 ACMP Document

ENCLOSURE VIII SCHEDULE/TIMING ISSUES

ENCLOSURE IX LEXICON FOR TERMS USED IN OCRM'S LETTER AND ENCLOSURES

ENCLOSURE I PROPOSED REVISIONS RELATED TO DISTRICT DESIGNATED AREAS

This enclosure describes CZMA approval issues related to district policies and designated areas. Generally, OCRM understands the proposed ACMP/district enforceable policy/designated area structure as follows:

1. For some state ACMP policies a district may develop policies (providing the district meets the various tests in ACMP rules) that do *not* have to be tied to a designated area. These are state policies that do not have language requiring a district to first designate an area. The district policy is treated like any other state standard and would apply to a project, regardless of the project location, if the project is located within the district or would affect district coastal uses or resources;

2. Some district policies require a district to designate an area and, as currently written, the district policy only applies to projects located in that designated area, regardless of the scope of effects on coastal uses or resources. A district policy would not apply to a project located outside the designated area, even when the project would affect the designated area. Likewise the policy would not apply to a project located outside the designated area when the project affects coastal uses that occur outside the designated area, which affect uses addressed by the designated area. Under this second category, there are three subsets of district/designated area policies:

    i. Subset one is where districts can designate areas to apply state and/or district policies, when state policies exist. In this case state policies apply to projects regardless of whether a district designates an area. If the district does not designate an area, there are no district policies, but the state policy would still apply to projects in the coastal zone and be implemented by the state. These policies include the Natural Hazards Area Policy, 11 AAC 112.210, the Important Habitat Policy, 11 AAC 112.300(b)(9), the Major Energy Facilities Sites Policy (11 AAC 114.250(e)), and the Important History or Prehistory Areas (11 AAC 114.250(i)). (The latter two are include here and not under paragraph 2.iii. below because on pages 98 through 101 of the December 17 ACMP Document, it states there are state standards for these areas, even though it also states there are no state standards; presumably the state will clarify this in the revised ACMP document.)

    ii. Subset two only includes the subsistence use policy. There is a state subsistence use policy, but the state policy is not enforceable by the state unless and until a district designates a subsistence use area. Once a district designates a subsistence use area, then the state policy, and any district subsistence use policies, would apply to projects within the designated area.

    iii. Subset three is where there is no state policy, but the districts are allowed to designate areas and develop policies. If the districts do so, then the district policies are used by the state for state and federal consistency reviews for projects occurring within the designated areas. If a district does not designate an area, then there are no policies, state or district, that could apply to a project. These policy areas are recreational use areas, 11 AAC 114.250(c), tourism use areas, 11 AAC 114.250(d), and commercial fishing and seafood processing facilities sites, 11 AAC 114.250(f), as described on pages 98 and 99 of the December 17 ACMP Document.

It is OCRM's view that the policies described above under number 2 cannot be approved under the CZMA in their present form. Several state policies require districts to designate areas and then limit application of district, and sometimes state policies, to projects located within the designated areas. For example, the state's current subsistence use policy is a statewide policy that can only apply if a district has a state approved designated area. Further, the state subsistence use policy and any district

subsistence use policies only apply to activities occurring within a designated area. No subsistence use policy(ies) could ever be applied to a project (on federal or state lands or waters) outside of the district's designated area. This would exempt any project not located in the designated area from any subsistence use policy, even though the subsistence use addressed by the designated area would be affected.

The reason these policies are not approvable in their present form is that the purpose of the CZMA is to encourage states to identify the uses and resources of a state's coastal zone and develop enforceable policies to effectively manage those uses and resources. The active terms used throughout the CZMA's policy objectives and NOAA's program approval regulations address effects and impacts on the state's coastal uses and resources. The CZMA and NOAA regulations employ the following terms to convey effects-based implementation of the CZMA: "protection;" "improve, safeguard, and restore;" "comprehensive planning, conservation, and management;" "affecting the coastal zone;" "uses having a direct and significant impact on coastal waters . . . assure appropriate protection;" "consider individual and cumulative impacts of uses on coastal waters;" 16 USC §§ 1452(2)(A), (C), (J), 1452(4), 1452(6); 15 CFR §§ 923.3(b), 923.11(b). Moreover, the function of the CZMA federal consistency provision is to assess and respond to proposed actions that affect coastal uses and resources. 16 USC §§ 1456(c)(1)(A) and 1456(c)(3)(A); 15 CFR part 930. Therefore, a state's coastal management program must address effects to uses and resources identified in the state's program. The mechanism for addressing the effects cannot be limited in application to the location of a proposed project. A discussion of federal consistency and its effects-based application to district plans and policies is described in Enclosure III.

The changes described below under sections A, B, C, D and parts of E are necessary to comply with the objectives of the CZMA and the application of the federal consistency requirement to activities affecting a district's designated areas.

Enclosure III describes how the revised district/designated area policies would apply through the CZMA federal consistency process to federal agency activities and federal license or permit activities that affect coastal uses addressed or protected by a designated area, regardless of the location of the activity. Enclosure III uses the subsistence use policy as an example.

A. SUBSISTENCE USE POLICY

If the state amended the subsistence use policy and explained the revised policy as described below, OCRM would be able to find the subsistence use policy preliminarily approvable. (New language is underlined, deletions in ~~strikeout~~.)

> 11 AAC 112.270. Subsistence. (a) A project within a subsistence use area designated under 11 AAC 114.250(g) or affecting any subsistence use identified for a designated area, must avoid or minimize impacts to subsistence uses of coastal resources.
>
> (b) For a project ~~within a subsistence use area designated under 11 AAC 114.250(g),~~ subject to paragraph (a), the applicant shall submit an analysis or evaluation of reasonably foreseeable adverse impacts of the project on subsistence use as part of
>
> (1) a consistency review packet submitted under 11 AAC 110.215; and
>
> (2) a consistency evaluation under 15 C.F.R. 930.39, 15 C.F.R. 930.58, or 15 C.F.R. 930.76.
>
> (c) Repealed ___/___/ 2004.
>
> (c) For the purpose of federal consistency reviews under 16 U.S.C. 1456, projects will be subject to paragraphs (a) and (b) in accordance with the requirements of the applicable subpart of

15 CFR part 930 and other relevant parts of Alaska's federally approved coastal management program.

The change to paragraph (a) is needed to comply with the effects-based application of the CZMA and the federal consistency requirement as described above in the beginning of this enclosure and in Enclosure III. (Needed for preliminary approval.) The change to paragraph (b) is a technical change to make it consistent with paragraph (a) and is simpler and clearer than repeating language from paragraph (a). (Needed for preliminary approval.)

Paragraph (c) for the subsistence use policy is *not* required for preliminary approval, but should be included to assist the public in understanding how the subsistence use policy will be implemented through federal consistency reviews. Enclosure III describes in detail the consistency process for district policies, designated areas and the subsistence use policy.

B. NATURAL HAZARDS AREA POLICY

If the state amended the Natural Hazards Areas policy and explained the revised policy as described above and in Enclosure III, OCRM would be able to find the policy preliminarily approvable. (Needed for preliminary approval.)

11 AAC 112.210. Natural hazard areas.

(c) Development in or affecting a natural hazard area may not be found consistent unless the applicant has taken appropriate measures in the siting, design, construction, and operation of the proposed activity to protect public safety, services, and the environment from potential damage caused by known natural hazards.

C. IMPORTANT HABITAT POLICY

If the state amended the Important Habitat policy and explained the revised policy as described above and in Enclosures III and V, OCRM would be able to find the policy preliminarily approvable. (Needed for preliminary approval.) For other changes that must be made regarding the habitat policy, *see* Enclosure V.

11 AAC 112.300. Habitats.

(b) The following standards apply to the management of the habitats identified in (a) of this section:

(9) important habitat

(A) designated under 11 AAC 114.250(h) must be managed for the special productivity of, and effects to, the habitat in accordance with district enforceable policies adopted under 11 AAC 114.270(g);

D. RECREATIONAL USE AREAS, TOURISM USE AREAS, COMMERCIAL FISHING AND SEAFOOD PROCESSING FACILITIES SITES, MAJOR ENERGY FACILITIES SITES POLICY, AND THE IMPORTANT HISTORY OR PREHISTORY AREAS

If the state amended the discussion of the last bullet for Recreational Use Areas (11 AAC 114.250(c)), Tourism Use Areas (11 AAC 114.250(d)), Commercial Fishing and Seafood Processing Facilities Sites (11 AAC 114.250(f)), Major Energy Facilities Sites (11 AAC 114.250(e)), and the Important History or

Prehistory Areas (11 AAC 114.250(i)) on pages 98 through 101 of the December 17 ACMP Document and explained the revised statements as described above and in Enclosure III, OCRM would be able to find the policies preliminarily approvable. (Needed for preliminary approval.)

- Requires that a district enforceable policy be written applicable within this area, because there are no state standards that address this use. Thus, the district must develop enforceable policies to be used in concert with the designation of that area to provide the management measures for addressing uses or activities within or affecting the area.

E. OTHER CHANGES TO ACMP DOCUMENT

These changes are needed to support changes described above in A, B, C or D, or the other enclosures. Additional changes are described in the other enclosures.

1. December 17 ACMP Document, page 17, last paragraph beginning with "Second, the three-mile limit is indeed the seaward boundary . . . ." A new fifth sentence is needed to clarify that the OCS coastal area is intended to be a geographic location description under 15 CFR § 930.53(a). (Needed for preliminary approval.) Without this change the description would not meet the state's intent to automatically subject federal license or permit activities occurring on the OCS to federal consistency review. This change would support changes described in sections A, B, C and D above and the explanation in Enclosure III, and the December 17 ACMP Document at section 5.3.9: Designation of Area and Enforceable Policies Applicable to Those Areas.

   This OCS coastal area seaward of the state's three-mile limit in federal waters is a "geographic location" for purposes of federal consistency reviews under 15 CFR § 930.53(a).

2. December 17 ACMP Document, page 92, second paragraph, beginning with "A recent policy interpretation by OCRM . . . ." This first sentence must be deleted. (Needed for preliminary approval.) The only way to designate areas outside the coastal zone is for federal consistency purposes for geographic location descriptions, as described in 15 CFR §§ 930.34 and 930.53(a). *See* definition of geographic location description in Enclosure IX (Lexicon) and the discussion in Enclosure III. This is not a recent OCRM interpretation. Past state practice for designated areas on federal lands does not obviate the CZMA prohibition and OCRM's long-standing position that the CZMA does not grant states the authority to develop regulations (including designated areas) for federal agencies or on federal lands. The second sentence should become the first sentence and be amended to read: "The application of designated areas and state and district enforceable policies is an important topic that hinges on a key distinction: . . . ."

3. December 17 ACMP Document, page 92, second paragraph, beginning with "A recent policy interpretation by OCRM . . . ." The penultimate and last sentences of the paragraph must be reversed and amended as described below. (Needed for preliminary approval.) This change is needed to be consistent with the changes described above under A, B, C, D and E.1.

   Thus, a state or district may not establish *designations* on federal lands. However, a district's enforceable policies developed for application within a designated area may be applied by OPMP to uses or activities that are occurring outside the boundaries of that designated area through the federal consistency review process.

4. December 17 ACMP Document, page 93-94, the entire latter part of section 5.3.9: Designation of area and Enforceable Policies Applicable to Those Areas, starting with the paragraph that begins, "For example, if a caribou herd migrates . . . ," must be deleted and replaced with Enclosure III. (Needed for preliminary approval.) The current discussion would not be correct if the changes in A, B, C or D are made. All affected parties must understand how the complicated district designated area/policies process would apply outside the designated areas. The best way to explain the process is to include the discussion in Enclosure III and the charts in the ACMP document.

5. December 17 ACMP Document, page 97, subsection 5.3.9.2: OPMP criteria and process for approval of designated areas, first set of bullets under "general parameters . . . ." A new bullet must be added at the end to clarify what the districts *can* do regarding areas on federal lands. (Needed for preliminary approval.) OCRM proposes the following:

    - A district may propose that OPMP adopt and seek OCRM approval of geographic location descriptions outside the state's coastal zone for purposes of federal consistency reviews under 15 CFR § 930.53(a). The district must show that effects from listed federal license or permit activities located in the geographically described location will have reasonably foreseeable effects on the uses covered by the district's designated area.

6. December 17 ACMP Document, page 105, section 6.1: Applicability of the ACMP Review Process. OCRM recommends this section explain whether 11 AAC 110.050(b)(2)(B), which states "an area described in AS 46.40.096(l)(2) that is subject to a consistency determination under 15 CFR part 930" includes "coastal areas" and/or any other geographic location description the state might propose.

7. December 17 ACMP Document, page 118, section 6.3.9: Timing, Schedule Modifications, and Terminations. The section, 11 AAC 110.270(a), needs the section provided below, because its present form could be construed as allowing alterations of federal consistency reviews in violation of NOAA regulations. (Needed for preliminary approval.)

    > (4) Any schedule modifications to the timing of consistency reviews by OPMP, the coordinating agency or a resource agency shall not alter the running of the review periods for federal consistency reviews, except as authorized by applicable sections of 15 CFR part 930.

8. December 17 ACMP Document, page 123, subsection 6.5.1: Determination of Scope of the Federal Consistency Certification. The citation to NOAA's federal consistency regulations is incorrect ("15 CFR 930.30–930.46") and needs to be changed to the sections for federal license or permit activities: "15 CFR 930.50–930.66."

9. December 17 ACMP Document, page 124, section 6.6: DEC Carveout. While OCRM has a better understanding of how the DEC carveout works, it is still a complicated process. OCRM strongly recommends that DNR include in the ACMP document a graphic representation of how the DEC carveout works for the various DEC/other state agencies/district decisions and state and federal consistency processes. OCRM found the graphic depictions by DNR staff at one of our recent meetings to be very helpful to understand this process.

ENCLOSURE II ENFORCEABLE POLICIES AND IMPLEMENTATION TECHNIQUE A AND B

A state coastal management program must include policies appropriate to the nature and degree of management needed for uses, areas, and resources identified as subject to the program. 15 CFR § 923.3(d). For example, the state has identified the use of subsistence resources as an important coastal use pursuant to 15 CFR § 923.11(a)(2). Therefore, the ACMP must include enforceable authorities to manage subsistence use in the coastal zone. 15 CFR §§ 923.11(a)(3) and 923.41(b).

The ACMP's enforceable policies "must be sufficiently comprehensive and specific to regulate land and water uses, control development, and resolve conflicts among competing uses in order to assure wise use of the coastal zone." 15 CFR § 923.40(a). The state must be able to ensure that the enforceable policies will be applied to the identified coastal uses. The state can do this through one or more of Technique A, B or C. 15 CFR §§ 923.42, 43 and/or 44, respectively. All three techniques require a coastal program to provide for state implementation/application of its enforceable policies. Alaska proposes to retain the use of both Techniques A and B.

When a state relies on Technique A, local implementation, the adoption of the applicable state policies, or local policies, by local governments is mandatory to ensure application of the enforceable policies and to manage the coastal use. 15 CFR § 923.42(a). There are five principal requirements of Technique A:

1. The state must have enforceable policies in effect at time of program approval that meet the requirements of 15 CFR § 923.3 and serve as standards and criteria for local program development. 15 CFR § 923.42(b)(1);

2. The state must be able to assure that coastal management decisions will comply with the program's enforceable policies during the development of local programs. 15 CFR § 923.42(b)(2);

3. If a local government fails to adopt a local program, the state must be able to directly implement the program or prepare and implement a local program on behalf of the local government. 15 CFR § 923.42(b)(3);

4. A state must have a procedure to review and adopt the local programs pursuant to state standards and provide opportunities for public and governmental entities, including federal agencies to participate in local program development and approval. 15 CFR § 923.42(b)(4); and

5. If a local government adopts a local program, but then does not implement the local program, the state must be able to ensure implementation. 15 CFR § 923.42(b)(5).

Thus, Technique A local programs are called "enforceable" local programs implementing a part or all of a state's coastal program. If a state decides not to rely on enforceable local implementation (Technique A), but rely solely on direct state regulation (Technique B), the state must have the "direct authority to plan and regulate land and water uses subject to the management program." 15 CFR § 923.43(b).

For example, the ACMP subsistence use policy and implementation structure recognize that subsistence use is a dominant issue for the ACMP and for which the state intends to defer in large part to local implementation. The state relies heavily on district involvement to manage subsistence uses and uses Technique A to implement the ACMP subsistence use policy. The proposed ACMP appears to meet numbers 1, 4 and 5 of the five principle Technique A requirements, 15 CFR §§ 923.42(b)(1), (b)(4) and

(b)(5). The state has in place standards and criteria to guide local program development, procedures to review and approve the local programs, and the ability to enforce a local program once adopted if a district fails to implement the approved local program. For the latter criteria, 15 CFR § 923.23(b)(5), once a district has an approved local program and an approved designated area for subsistence use, that designated area and district policy becomes a statewide standard, regardless of local implementation. OPMP implements the state's subsistence use policy and any district subsistence use policies through state and federal consistency reviews. OPMP does this regardless of whether the district is adequately implementing its district program.

However, it appears that the ACMP does not comply with number 2 of the Technique A requirements. The state is not able to assure that coastal management decisions will comply with ACMP enforceable policies during the development of district plans, pursuant to 15 CFR § 923.42(b)(2). The subsistence use policy is a prime example.

As currently proposed, the subsistence use policy can be implemented only through an approved district plan. The subsistence use policy is not enforceable by the state until a district has an approved district plan and has an approved subsistence use designated area. Only then can the state enforce the subsistence use policy and only for activities affecting the subsistence uses identified for the approved designated area. Therefore, the subsistence use policy could not be implemented/applied during district plan development. There are at least two ways to rectify this approvability problem. The first way is to amend the subsistence use policy (11 AAC 112.270) to include a new paragraph similar to the following:

> (d) During the development of subsistence use areas designated under 11 AAC 114.250(g), OPMP shall apply paragraph (a) and (b) to projects subject to review under paragraph (c).

A second way is to correct the approvability issue and continue to rely on the previously approved ACMP regulations for state and federal consistency decisions. This would maintain the approvability of the current ACMP pending completion of the revised ACMP. As discussed in the letter and Enclosure VIII this means that the state legislature must either remove or extend the July 1, 2005, deadline in HB 191, Sec. 49.

In addition, it is not clear that the ACMP complies with number 3 of the Technique A requirements. The state is not able to assure that coastal management decisions will comply with ACMP enforceable policies if a district fails to adopt a plan, pursuant to 15 CFR § 923.42(b)(3). NOAA's regulations provide five ways to meet this requirement, 15 CFR § 923.42(b)(3)(i)–(v). The state will need to implement one or more of these provisions. OCRM might consider using the responsibilities of the Alaska Department of Fish and Game's Division of Subsistence to meet this requirement. However, because OCRM does not have sufficient knowledge of the Division of Subsistence's role, the state needs to describe how the Division's authorities would address subsistence use in those areas where subsistence use is important and the district fails to adopt a district plan.

Alternatively, if the state decided not to have enforceable district plans through Technique A, but only implement enforceable policies at the state level through Technique B, under the proposed ACMP the state would not be able to implement the subsistence use policy because the policy would not be enforceable without the establishment of a district plan and designated area. The result would be that the state would have no enforceable ACMP policy for a key coastal use, subsistence.

ENCLOSURE III APPLICATION OF SUBSISTENCE USE POLICY TO OTHER DISTRICT, STATE AND FEDERAL LANDS AND WATERS

Enclosure III describes how the revised district/designated area policies, described in Enclosure I, would apply through the CZMA federal consistency process to federal agency activities and federal license or permit activities that affect coastal uses addressed or protected by a designated area, using the subsistence use policy as an example. OCRM is providing this information at the request of DNR staff so that the state and districts understand potential scenarios for the application of district policies and designated areas.

Subsistence is a "critically important use of coastal resources, and [the state] continues to strive toward the goal of assuring subsistence use of coastal resources." December 17 ACMP Document at 61. OCRM agrees that addressing subsistence use is a key factor in the proposed ACMP. *See* Enclosures I and IV for general discussion of district plan content and approvability.

The discussion in this enclosure assumes *arguendo* that the state is able to meet the Technique A requirements as described in Enclosure II. This enclosure describes the designated area (DA) structure for subsistence use areas on district lands, the geographic location description (GLD) requirements in NOAA's regulations (or "coastal area" under the ACMP) and the federal consistency requirements. To illustrate this discussion, there are five charts attached:

Chart 1 is a general chart showing: coastal zone, GLDs (coastal areas), seaward and landward coastal zone boundaries, federal lands and waters, state waters, district boundaries, and designated areas;

Chart 2 applies subsistence use policy to federal agency activities in federal and state waters;

Chart 3 applies the subsistence use policy to federal agency activities on federal and state lands;

Chart 4 applies the subsistence use policy to federal license or permit activities in federal and state waters; and

Chart 5 applies the subsistence use policy to federal license or permit activities on federal and state lands.

A. Subsistence use policy: federal agency activities in federal and state waters, Chart 2

Federal agency activities, regardless of location, are subject to federal consistency and applicable ACMP enforceable policies, if the federal agency determines coastal effects are reasonably foreseeable. 16 USC § 1456(c)(1) and 15 CFR §§ 930.33 and 930.34. This is an affirmative duty on the part of federal agencies. *Id.* States cannot remove this duty or exclude from the federal consistency process activities that a federal agency has determined will have reasonably foreseeable coastal effects. *Id.* This is not only because of the duty placed on federal agencies, but because states must provide for public participation in the review of federal agency activities affecting coastal uses or resources. 16 USC § 1455(d)(14) and 15 CFR §§ 930.2 and 930.42. Once a federal agency has submitted a consistency determination (CD) to a state, the state is obligated to review the activity, provide for public comment on the state's decision and either concur with or object to the CD. The state may, working with federal agencies, exclude *de minimis* or beneficial activities from federal consistency, pursuant to the requirements of 15 CFR §§ 930.33(a)(3) and (a)(4). General, phased and national consistency determinations under 15 CFR § 930.36 are also available to facilitate state-federal coordination.

Because of the application of the federal consistency effects test to federal agency activities, as described in the preceding paragraph, the coastal zone boundary, geographic location descriptions (GLDs) and subsistence use designated areas (DAs) have little relevance to the application of federal consistency for federal agency activities. For federal agency activities, GLDs described under 15 CFR § 930.34(b) only provide notice to federal agencies that the state believes federal agency activities proposed for the GLD are likely to have coastal effects. Regardless of the location of the federal agency activity, it is subject to the state/district's subsistence use policies if it will affect the subsistence uses for which the district's DA was created. The explanations below assume, for purposes of discussion, that the GLDs/coastal areas apply to both federal license or permit activities and federal agency activities. (The state may also describe in the ACMP a GLD for purposes of federal license or permit activities under 15 CFR § 930.53(a)(1), but not have it described for federal agency activities under 15 CFR § 930.34(b). The state would have to make this determination as a categorical matter and not case-by-case application.)

Chart 2 shows a District A's DA for whale hunting covering an area used for hunting, transportation to and from whale hunting grounds (both in and outside state waters) and for landing the whales on district land. The state has a general coastal area, or GLD, for part of federal waters (the straight red line in federal waters). In addition, the district also proposed, and the state adopted, a more specific GLD (the peanut-shaped GLD) for an area where federal agency activities and listed federal license or permit activities are expected to affect subsistence use hunting of whales.

Therefore, federal agency activities "A," "B," "C," and "D" shown on Chart 2 are all subject to federal consistency and must be consistent to the maximum extent practicable with the state's subsistence use policy and any district subsistence use policy approved for the DA, if the activities will have reasonably foreseeable effects on whale hunting covered by District A's DA.

If District A did *not* have a subsistence use DA for whale hunting, then under the proposed ACMP structure, the federal agency would not have to assess effects to District A's subsistence uses and would not have to be consistent with the state's subsistence use policy, even if the activities would affect subsistence use of the whales. Therefore, if District A does not have a subsistence use DA for whale hunting and the only effect to Alaska coastal uses or resources is to subsistence whale hunting, then the federal agency would not have to provide a consistency determination to OPMP.

Federal agency activity "A" (Project A) is located in federal waters outside of a GLD. If the federal agency determines Project A will cause the whales to deviate from migration routes such that Native Alaskans would have to travel farther to reach the whales, or might cause the whales to avoid traditional hunting areas, or would harm the whales harvested by the Native Alaskans, then there would be an effect on the subsistence use of whales and the federal agency would provide OPMP with a consistency determination. It would not matter where the effect occurs, whether inside the general GLD, the more specific GLD (the peanut-shaped GLD), federal waters, state waters or within the DA.

A federal agency might also determine that effects to migration routes or harm to whales are temporary in nature such that no impact to the ability of Native Alaskans to hunt the whales would occur, and thus there would not be an effect on subsistence uses covered by District A's designated area. For example, the whales might deviate from course due to a physical barrier, but would still enter the traditional hunting areas. Or, harm to whales from noise would be temporary in nature and not result in course deviations or other harm. In such cases where the effects would not affect subsistence use, the federal agency would not provide a consistency determination.

Federal agency activities "B," "C," and "D" (Projects B, C and D) are located in the peanut shaped GLD, in state waters within the DA, and within state waters outside of the DA, respectively. Each project is subject to federal consistency in the same manner as described for Project A. The fact that Project B, C and D lie within the GLD, within the DA or within state waters, is of no consequence to determining whether consistency applies, except to alert the federal agency that the GLD and DA are areas of particular concern to the state and an area used for subsistence hunting. If Project C or D, proposed to be located within the coastal zone, were federal agency "development" projects, as defined in 15 CFR § 930.31(b), coastal effects would be assumed and the federal agency would provide a consistency determination to OPMP, pursuant to 16 USC § 1456(c)(2) and 15 CFR § 930.33(b).

B. Subsistence use policy: federal agency activities on federal and state lands, Chart 3

The application of federal consistency to Projects A, B, C and D on state and federal lands in Chart 3 is the same as that for federal agency activities in federal or state waters, as described above under Chart 2. Projects A, B, C, and D are all subject to the federal agencies' determination of whether the federal agency activity will affect either caribou that are covered under District A's subsistence use DA for caribou, or District B's subsistence use DA for harvesting berries. The fact that Project A, B, C and D are located on federal lands, outside the coastal zone on federal lands, inside a DA, or on state lands outside the coastal zone is of no consequence to determining whether consistency applies, except to alert the federal agency that the GLD and DA are areas of particular concern to the state and an area used for subsistence use. If Project C, proposed to be located within the coastal zone, is a federal agency "development" project, as defined in 15 CFR § 930.31(b), coastal effects would be assumed and the federal agency would provide a consistency determination to OPMP, pursuant to 16 USC § 1456(c)(2) and 15 CFR § 930.33(b).

As a further example, assume Project B or D would cause caribou to stop migrating through traditional migration routes (i.e., through the Specific GLD based on effects to caribou hunting that passes through the federal lands within the coastal zone, federal lands outside the coastal zone and on into interior state lands) and that the caribou are the subject of District A's DA. Project B/D would then be subject to federal consistency and the state's subsistence use policy and District A's subsistence use policy for the caribou DA, because the projects, while located outside the DA, would affect the subsistence use covered by the DA. Assume further, that the mis-directed caribou would now traipse through District B's DA for subsistence harvesting of berries and trample the berries. In this case, the federal agency's consistency determination for Project B or D would also have to be consistent with the state's subsistence use policy and District B's subsistence use policy for berries.

C. Subsistence use policy: federal license or permit activities in federal and state waters, Chart 4

Federal license or permit activities are only subject to federal consistency pursuant to the listed, unlisted and GLD requirements of 15 CFR § 930.53. Thus, unlike federal agency activities, a state can determine which federal license or permit activities it will review. States do not have to review unlisted activities occurring within or outside the coastal zone and do not have to describe GLDs and review listed activities occurring outside the coastal zone. Therefore, when a federal license or permit activity is subject to federal consistency, the listing and GLD requirements, the coastal zone and GLD boundaries, and location on federal lands are very important.

Chart 4 shows District A's DA for whale hunting covering an area used for hunting, transportation to and from whale hunting grounds (both in and outside state waters) and for landing whales on district land.

The state has a general coastal area, or GLD, for part of federal waters where listed federal license or permit activities are subject to federal consistency. However, the state could adopt a more specific GLD (the peanut shaped GLD on the chart) where federal license or permit activities would be subject to federal consistency based on effects to subsistence hunting for whales in that area.

Project A is located in federal waters and outside of any GLD/coastal area described in the ACMP. Therefore, even if Project A requires a federal license or permit that is on the ACMP's federal consistency list for federal licenses or permits and even if the project will affect subsistence hunting of whales covered by District A's DA for whale hunting, Project A would be an unlisted activity, pursuant to 15 CFR §§ 930.53(a)(2) and 930.54. Thus, if OPMP wanted to review Project A for federal consistency, OPMP would have to notify the applicant, the authorizing federal agency and OCRM that it intends to review the activity and obtain OCRM approval for the review. OCRM's decision would be based on whether OPMP demonstrated that Project A would have a reasonably foreseeable effect on coastal uses or resources. Only OPMP can make an unlisted activity request to OCRM.

Project B is located in federal waters, but within an OCRM-approved GLD (the "peanut" GLD). The more specific peanut GLD provides greater predictability to the process by only subjecting federal license or permit activities occurring within the peanut-GLD to federal consistency review. The GLD should be limited to areas where effects would occur. Therefore, Project B would automatically be subject to ACMP federal consistency review, the state's subsistence policy and District A's subsistence policies if Project B requires a federal license or permit included on the ACMP's federal consistency list for federal license or permit activities.

If Project B required a federal license or permit that is not on the ACMP federal consistency list, then OPMP would have to follow the unlisted activity procedure and seek OCRM approval to review Project B, even though Project B is located in a GLD.

Projects C and D are located in state/district waters. If Project C or D requires a federal license or permit included on the ACMP federal consistency list for federal license or permit activities, the projects are automatically subject to ACMP federal consistency review. If Project C or D required a federal license or permit that is not on the ACMP federal consistency list, then OPMP would have to follow the unlisted activity procedure and seek OCRM approval to review Project C and D, even though the projects are located in state/district waters and even though Project C occurs within a DA.

If District A did *not* have a subsistence use DA for whale hunting, then under the proposed ACMP structure, the applicant would not have to assess effects to District A's subsistence uses and would not have to be consistent with the state's subsistence use policy.

D. Subsistence use policy: federal license or permit activities on federal and state lands, Chart 5

The application of federal consistency to Projects A, B, C, or D on state and federal lands in Chart 5 is the same as that for federal license or permit activities in federal or state waters; as described above under Chart 4. Therefore, Project A, located on federal land outside the coastal zone, and outside any GLD/coastal area, would be an unlisted activity, even if Project A requires a federal license or permit that is on the ACMP federal consistency list.

Project B is located on federal land outside the coastal zone, but within an OCRM-approved GLD for federal license or permit activities. The state, based on district recommendation, adopted the specific

GLD to cover the area where federal license or permit activities would be expected to affect subsistence use caribou hunting. Therefore, Project B would automatically be subject to ACMP federal consistency review, the state's subsistence policy and District A's subsistence use policies if Project B requires a federal license or permit included on the ACMP's federal consistency list for federal license or permit activities. This would also be the case if Project B were located within the part of the specific caribou GLD that is located on state lands outside the coastal zone (Project B2).

If Project B were located on excluded federal lands within the boundaries of the coastal zone (Project B3), and Project B3 required a federal license or permit listed on the ACMP federal consistency list for federal license or permit activities, it would be automatically subject to ACMP federal consistency review, the state's subsistence use policy and District A's subsistence use policies. This would be the case even if OPMP had *not* described the specific caribou GLD, because federal lands located within the boundaries of a state's coastal zone ("federally excluded lands") are *automatically* a GLD, pursuant to 15 CFR § 930.53(a)(1).

Project C is located within District B's DA for subsistence berry harvesting. If Project C requires a federal license or permit included on the ACMP federal consistency list for federal license or permit activities, the project is automatically subject to ACMP federal consistency review, the state's subsistence use policy and District B's subsistence use policies.

Even though Project C2 is located outside District A and B's designated subsistence use areas, because it is within the ACMP coastal zone it is subject to ACMP federal consistency review in the same manner as that for Project C. As is the case for all federal consistency reviews, OPMP makes the consistency decision and would determine whether it is reasonably foreseeable that the project would affect subsistence uses and whether and to what extent the state/district subsistence use policies apply.

Project D is located on state land, outside the coastal zone, but within the ACMP's general coastal area/GLD, and Project D requires a federal license or permit included on the ACMP federal consistency list. In this case even though Project D is not in the specific caribou GLD, the project is automatically subject to ACMP federal consistency review, the state's subsistence use policy and District A's caribou subsistence use policies and District B's berries subsistence use policies, because it is listed and within a GLD. The state could choose, however, to narrow the application of the state and district subsistence use policies to projects in areas landward of the coastal zone. To achieve this goal, OPMP could either remove the general coastal area/GLD description from the ACMP, or describe specific subsistence use GLDs so that the ACMP federal consistency list for federal license or permit activities apply only to a particular coastal effects within the specific GLD, e.g., subsistence use of caribou or berries.

If Project B, B2, B3, C, C2 or D required a federal license or permit that is not on the ACMP federal consistency list, then OPMP would have to follow the unlisted activity procedure and seek OCRM approval to review Project B, if it wanted to review the project, even though the projects are located in either the coastal zone, District B's DA or a GLD.

CHART 1 – CZMA Federal Consistency for ACMP – Subsistence Use – General

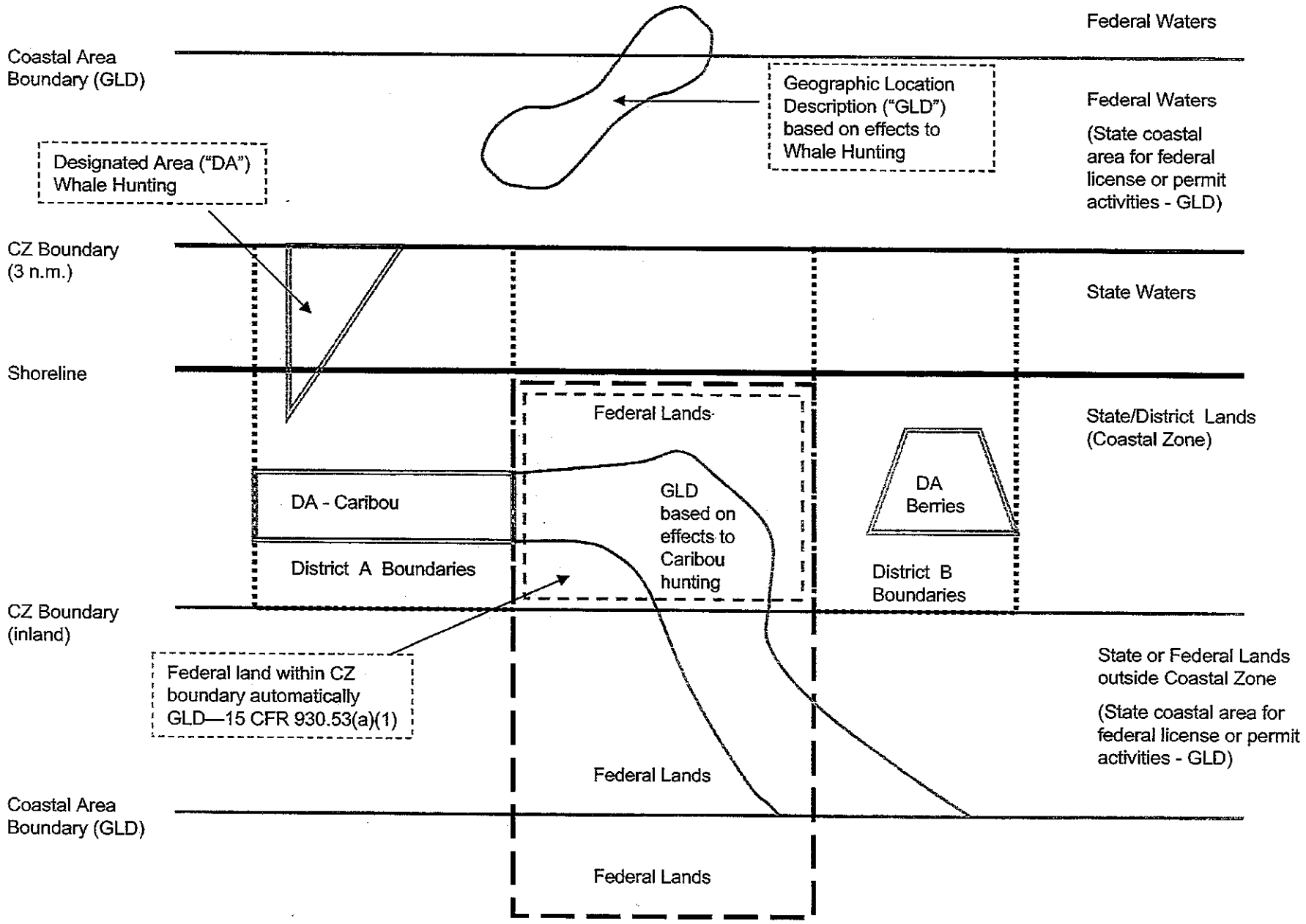


CHART 2 – CZMA Federal Consistency for ACMP – Subsistence Use – Federal Agency Activity (CZMA 307(C)(1)) – Federal & State Waters

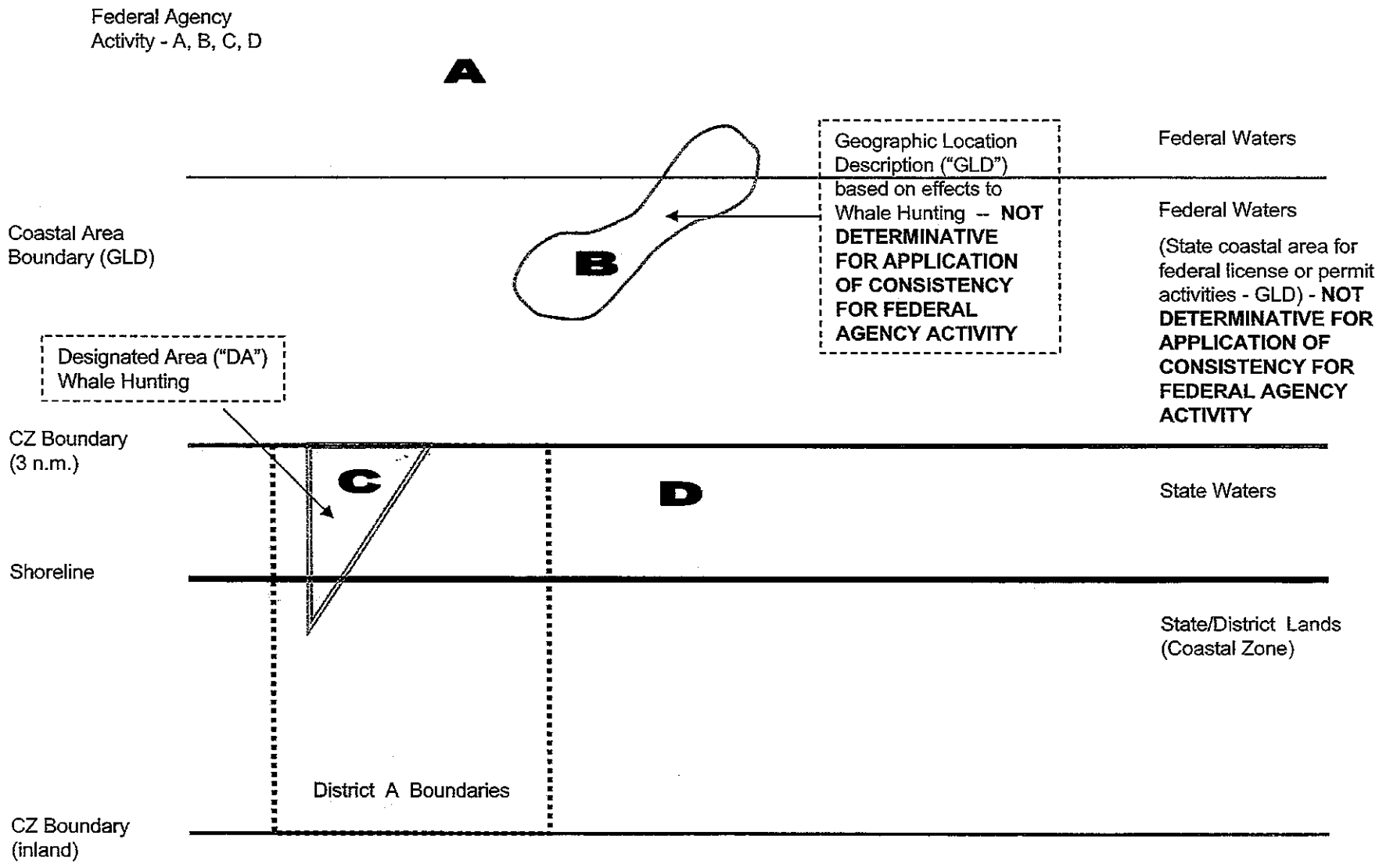


CHART 3 – CZMA Federal Consistency for ACMP – Subsistence Use – Federal Agency Activity (CZMA 307(C)(1)) – Federal & State Lands

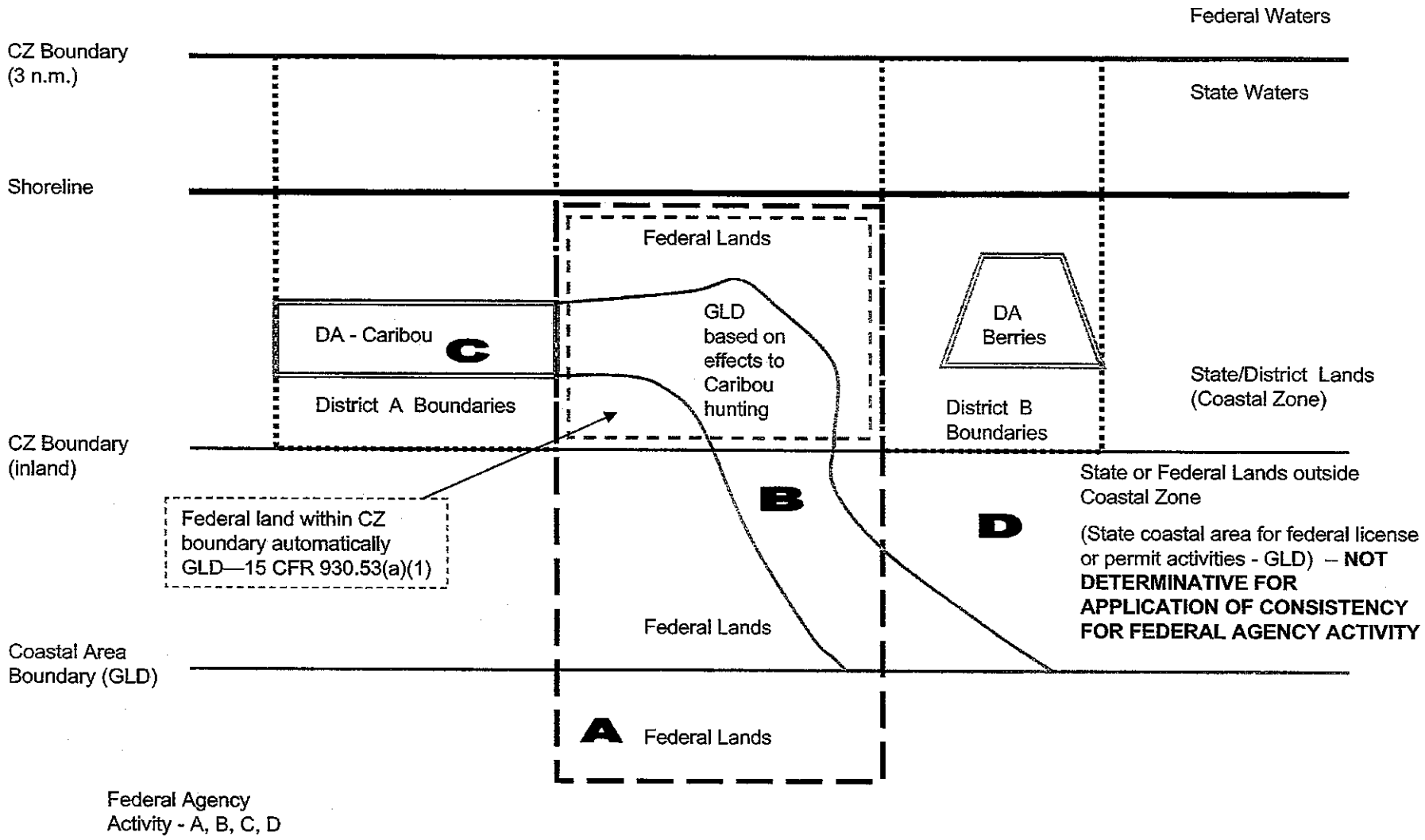


CHART 4 – CZMA Federal Consistency for ACMP – Subsistence Use – Federal License or Permit Activity (CZMA 307(C)(3)(A)) – Federal & State Waters

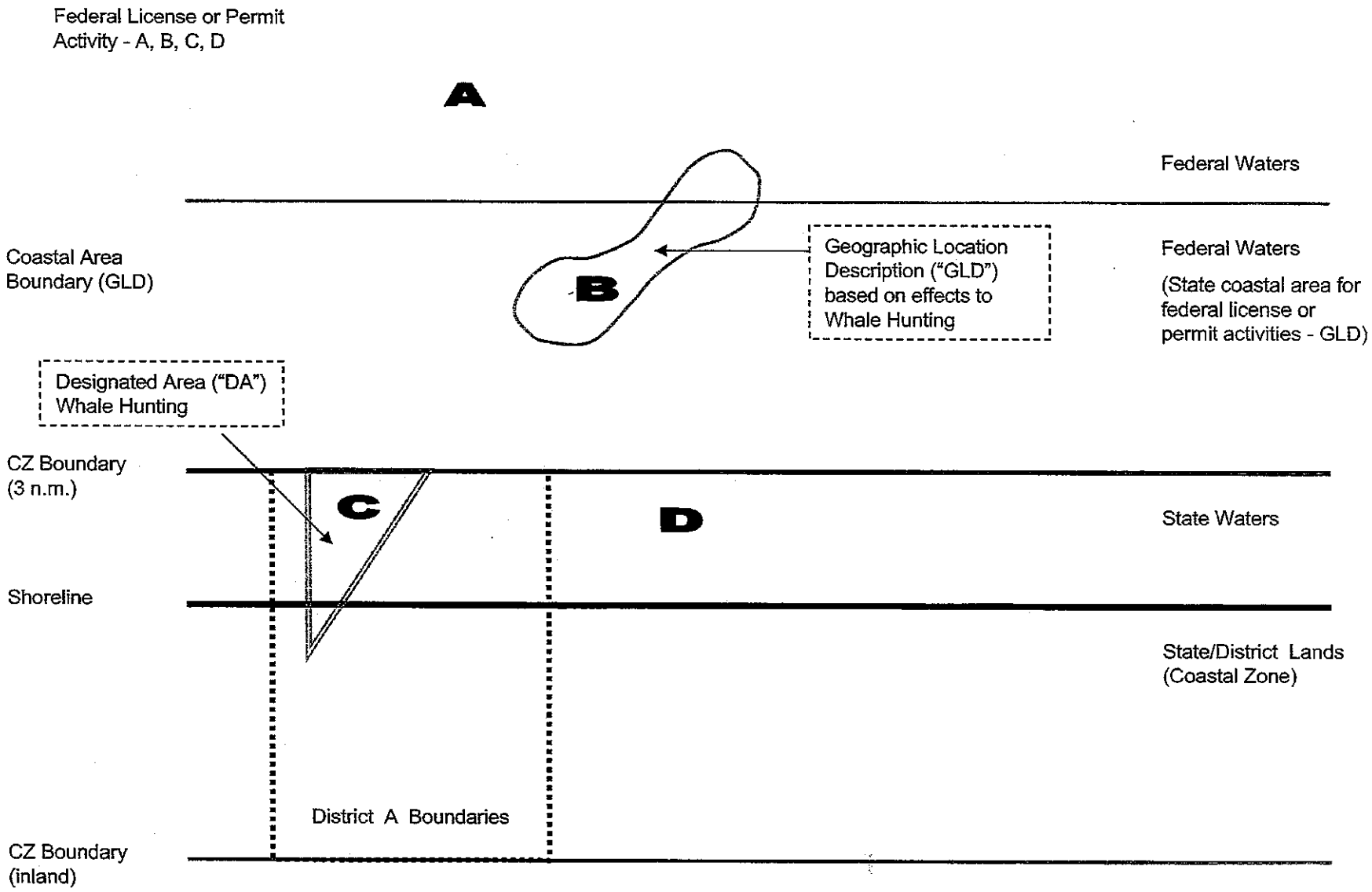
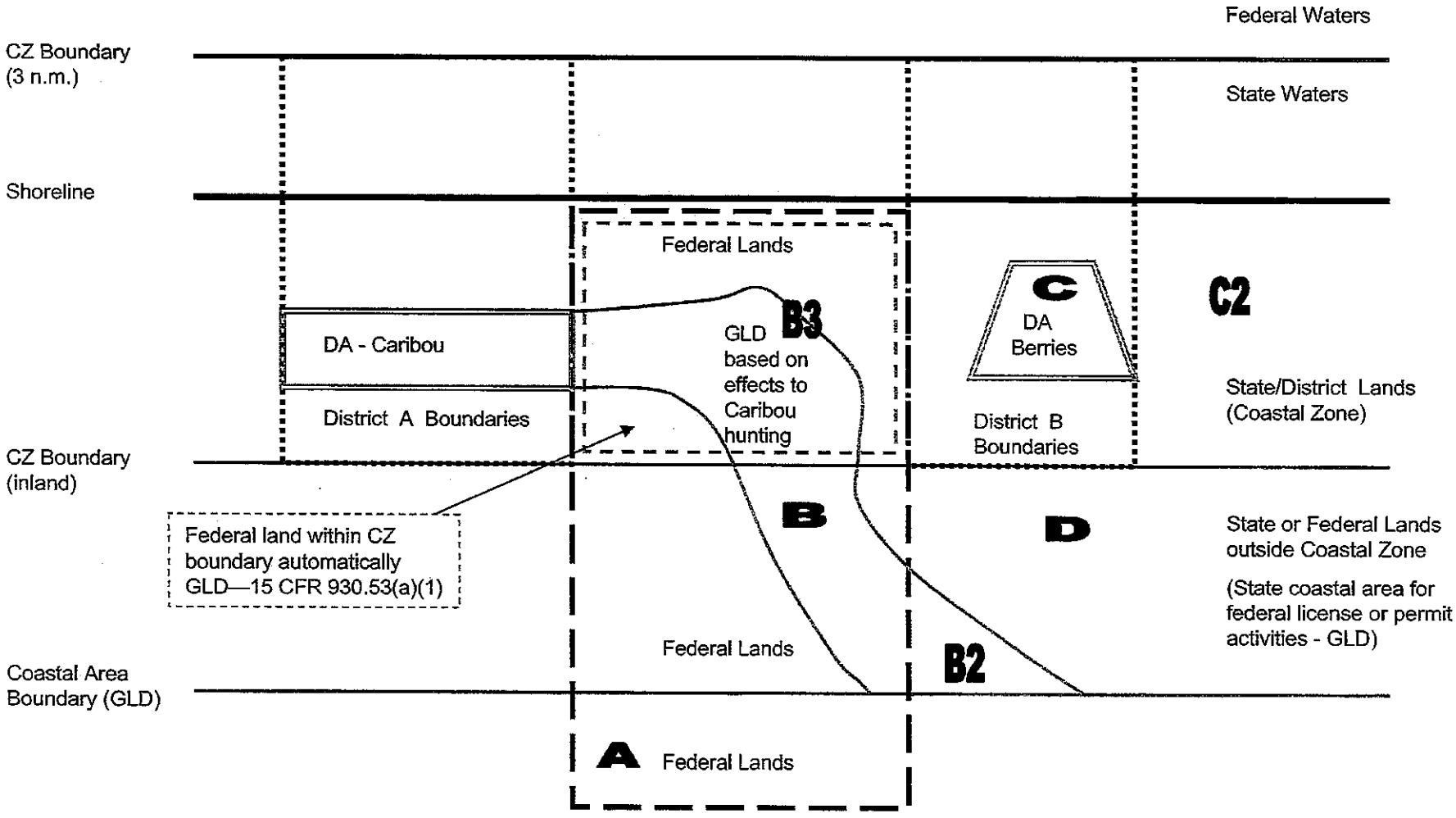


CHART 5 – CZMA Federal Consistency for ACMP – Subsistence Use – Federal License or Permit Activity (CZMA 307(C)(3)(A)) – Federal & State Lands



Federal License or Permit Activity
- A, B, B2, B3, C, C2, D

ENCLOSURE IV SCOPE AND CONTENT OF COASTAL DISTRICT PROGRAMS

State coastal management programs must provide a "clear understanding of the content of the program, especially in identifying who will be affected . . . ," and a "clear sense of direction and predictability for decisionmakers who must take actions pursuant to or consistent with the management program." 15 CFR § 923.3(e)(1) and (2). Likewise, the ACMP must explain how the coastal uses subject to the ACMP will be managed. 15 CFR § 923.11(a)(3). This includes clearly describing the districts' role in the ACMP. The ACMP must clearly articulate what the new district role will be in the ACMP. Likewise, by rule and in textual explanation, the ACMP must provide clear guidance to the districts on the scope and content of district programs and policies.

As described in Enclosure II, the CZMA offers states several ways to implement their coastal management programs. Both the pre-existing and the proposed ACMP rely on local implementation programs and direct state control (Techniques A and B). Under the CZMA, states have considerable discretion in the responsibilities delegated to local governments. OCRM agrees with the goals of HB191, in particular subsection (3) of the findings which state,

> there is a need to update and reform the district coastal management plans under the ACMP so that the local enforceable policies are clear and concise, provide greater uniformity in coastal management throughout the state, relate to matters of local concern, and do not duplicate state and federal regulations.

When OCRM reviewed HB 191, we recognized that while district programs would need revision, they would continue to be an important part of the ACMP. OCRM finds that the lack of clarity regarding district plans and enforceable policies is such that the districts' role cannot be adequately determined. This has significantly impaired the ability of districts to complete their plan revisions by July 1, 2005. This is due in part to incomplete and varying interpretations of the district's role over time. This enclosure and Enclosure I describe the changes required to address this issue.

Section 5.3 of the December 17 ACMP Document, must be revised and expanded to provide clear and precise guidance on district plan and policy development. The January 12, 2005, draft language submitted to OCRM provides a good foundation. Further clarification is needed in the discussion of all of the district plan requirements on pages 72 and 73 of the December 17 ACMP Document, regarding the content of district policies. This information is necessary for preliminary approval and must be available to all affected interests, both in the program document and on the ACMP website before OCRM begins its NEPA scoping process. The revised ACMP document should also contain an expanded set of model policies covering the complete set of ACMP coastal issues that could be approvable under the proposed ACMP regulations. OCRM also found the decision tree discussed in the January district conference call to be helpful, and suggests that it be included in the text.

The district planning document issued by OPMP in December 2004 is a useful document. It covers a broad array of planning issues that have been raised by the districts. This document should be updated and revised to reflect current ACMP policy and interpretations and be made available on the ACMP website prior to the initiation of the NEPA scoping process.

The "Flow From" Concept

An area of regulatory uncertainty is the "flow from" requirement. This requirement, as articulated in 11AAC114.270(a)(1), states that only those specific uses and activities that are discussed in the ACMP state standards can be addressed by district policies. OCRM's understanding of DNR's interpretation of

the "flow from" requirement is that it further limits district policies to the specific "impacts" or "characteristics" related to the specific uses and activities identified in each ACMP standard. OCRM further understands that DNR is proposing to undertake rulemaking to revise the ACMP regulations to clarify the "flow from" concept so that it conforms with this more narrow interpretation.

The proposed DNR interpretation, would preclude districts from filling the "gaps" in the ACMP standards to address specific local resource issues, or in the context of HB 191, "matters of local concern." As OCRM understands it, district policies could only further elaborate on what is already explicitly addressed in the ACMP policies. The fact that the flow from requirement and the other requirements for district policy development, for the most part, limit the activities and effects that districts can address in their plans, raises a significant concern about whether the ACMP standards, when combined with policies in district programs, are broad enough in scope to provide the comprehensive management needed for uses, areas, and resources that are of importance to the state. *See* 15 CFR § 923.3(d).

Before DNR undertakes rulemaking to revise the "flow from" requirement, DNR should consult with the affected districts, and OCRM, to determine the effects of the proposed change, and whether the proposed revision will leave gaps in the ACMP's ability to sufficiently manage Alaska's coastal uses and resources, either through state or district implementation.

The Coastal Development Policy

Subsection 11 AAC 112.200(c) of this policy and supporting text are found at pages 56-57 of the December 17 ACMP Document. The policy and supporting text contradict one another. The policy states that projects must comply with Corps of Engineer regulations found in 33 CFR parts 320-323. The text, however, states "that the standard is not intended to require compliance" (sic). While not an approvability issue, the text needs to be modified to be consistent with the regulatory language.

ENCLOSURE V HABITAT MANAGEMENT MECHANISMS

State coastal management programs manage for the protection of wildlife and their habitat through a variety of mechanisms and policies identified in NOAA regulations. Mechanisms to manage coastal uses and resources must assure appropriate protection of those areas and resources that make the state's coastal zone a unique, vulnerable, and valuable area, including natural resources and fish and wildlife habitat. 16 USC § 1452(2)(A); 15 CFR § 923.3(b). The management program must contain a broad class of policies for resource protection, management of coastal development and simplification of governmental processes. 15 CFR § 923.3(c). The policies must also be clear and predictable in their implementation and provide management mechanisms appropriate to the needs of the coastal resources and uses. 15 CFR § 923.3(d) and (e). The enforceable policies of the state's management program must be sufficiently comprehensive and specific to resolve conflicts among competing uses, control development and regulate land and water uses. 15 CFR § 923.40.

The ACMP's proposed habitats policy at 11 AAC 112.300 provides two ways for the state's coastal habitats to be managed. First, the state identifies habitats in the coastal zone subject to the ACMP and sets forth general standards that apply to their management. These include eight areas; offshore areas, estuaries, wetlands, tideflats, rocky islands and sea cliffs, barrier islands and lagoons, exposed high-energy coasts, and rivers, streams, and lakes and the active floodplains and riparian management areas of those rivers, streams and lakes.

Second, the state breaks out "important habitats" to include either any of the first eight habitats that are listed, or other habitats in the coastal zone that are specifically designated or identified under various requirements, including being "shown by written scientific evidence to be significantly more productive than adjacent habitat." Under the proposed ACMP rules, districts may only develop habitat policies through this second avenue. As stated in the ACMP rules, important habitat:

> (A) designated under 11 AAC 114.250(h) must be managed for the special productivity of the habitat in accordance with district enforceable policies adopted under 11 AAC 114.270(g); or (B) identified under (c)(1)(B) or (C) of this section must be managed to avoid, minimize, or mitigate significant adverse impacts to the special productivity of the habitat. (11 AAC 112.300(b)(9).)

OCRM finds the ACMP habitats policy does not include clear mechanisms for the comprehensive management of fish and wildlife habitat, including clear mechanisms for the resolution of conflicts among competing uses of habitat. First, the general policies and standards proposed by the state do not address impacts to the biological functions of habitat, and they apply only to designated geographic locations. Second, the criteria for designation of important habitat areas to which the broader habitat policies and standards could apply lack clarity, definition, and consistency with accepted scientific terminology and concepts. The specific issues and proposed solutions are discussed below.

1. Coastal Habitats 1–8: As discussed above, state standards have been developed for eight specific types of coastal habitats. 11 AAC 112.300(a). However, with the exception of two of those habitats which include consideration of coastal species (rocky islands and sea cliffs, and barrier islands), management of the resources is limited to physical effects, such as water flow and circulation issues, and avoiding, minimizing, or mitigating "significant adverse impacts to competing uses such as commercial, recreational, or subsistence fishing, to the extent that those uses are determined to be in competition with the proposed use." 11 AAC 112.300(b). The policy is silent on the biological functions of habitat, many of which are significant contributors to coastal values and resources and coastal uses. The policy does not acknowledge the scientific premise that the opportunity to engage in fishing, for example, relies on

the proper biological function of the habitat to support the species targeted in commercial, recreational and subsistence fishing. Nor is the policy comprehensive in its approach to habitat management, which prevents the state standards from addressing the underlying biological functions of habitat which sustain the plant and animal life, which are then subject to commercial, recreational and subsistence fishing. For example, the wetlands management standards only address water flow and natural water circulation.

In addition, the phrase "such as commercial, recreational, or subsistence fishing," throughout 11 AAC 112.300(b)(1) is unclear and confusing. The phrase "such as" implies that the uses listed are examples of a potentially unlimited list of uses. However, the intent of the phrase as it is applied in the habitat policy appears to be limiting consideration of conflicting uses to commercial, recreational and subsistence uses. In addition, the previous ACMP policy used this language in such a way that made it clear that the intent was to apply it only to commercial, recreational or subsistence fishing. Clarification is needed in the ACMP document on whether there has been a change in the policy to broaden the meaning of the phrase to examples, or whether the drafting change unintentionally altered the meaning of the policy.

Additional language or revised standards are needed to address OCRM's concerns regarding the habitats policy's ability to comprehensively address all of the characteristics of habitats. The management standards for offshore areas, estuaries, wetlands, tideflats, exposed high energy coasts, rivers, streams, and lakes, and important habitat could be revised to include the language that currently appears under the rocky island and sea cliffs habitat standard: "avoid, minimize, or mitigate significant adverse impacts to habitat used by coastal species." Alternatively, this could be inserted as a global policy that applies to all of the habitats under 11 AAC 112.300(b).

2. Important Habitats:

One way for DNR, and the only way for districts, to develop more comprehensive standards and policies for any of the coastal habitats listed in 11 AAC 112.300(b)(9)(A)(1)–(8) or other habitats that could address the lack of management of the biological values and functions of habitat as described above, is through designation of the habitat as an "important habitat." This part of the habitat policy provides for the protection of "special productivity" of "important habitats" that can either be designated by the districts, identified by DNR during permit review, or be identified through several existing state conservation programs. However, as discussed below, the current regulatory language does not use generally accepted scientific terminology, nor are the terms defined within the regulations or the ACMP document. The result is that the ACMP has established a standard for designating important habitat that would be difficult to meet, and might make important habitat protection unattainable, without further clarification.

In 11 AAC 112.300(c)(1)(B)(ii), one of the elements required for designating an "important habitat" is "written scientific evidence [that a habitat is] significantly more productive than adjacent habitat." First, since the state is requiring written scientific evidence to support the designation of a habitat as "important," it must provide a clear explanation or definition of what "written scientific evidence" means so that it is a standard understandable to the users, districts, scientific community and other affected interests.

Second, the new ACMP regulations do not define either "productive" or "significantly more productive." To the best of OCRM's knowledge, no such term as "significantly more productive" is used in the scientific community when describing habitats. OCRM is familiar with the scientific terms "biologically productive," and "fully functioning biological conditions" to describe a habitat which is important.

Without a definition in the ACMP or use of a term of art generally accepted in the scientific community, the policy lacks sufficient clarity to provide notice of the content of the standard to users, districts and other affected interests. Therefore, the state needs to clarify the "significantly more productive" standard for designating important habitat, and either define with specificity what it means by that term and how it intends to measure "productivity" or use terminology or a standard generally accepted in the scientific community which would be clear and understandable. In addition, it would be appropriate to address the values habitat provides to coastal uses and resources by using a more comprehensive approach that incorporates the multiplicity of factors which make a specific location an "important habitat."

Third, the term "adjacent habitat," must either be changed or clarified. Typically, comparing the importance of habitat is accomplished by examining the quality, location, distribution, and demand for resources on a landscape, ecosystem or regional basis and is limited to one habitat type, rather than comparing it to its adjacent habitat, which may or may not be the same type of habitat. As it is currently written, Alaska's "important habitat" designation criteria does not distinguish between different types of adjacent habitats, or whether it is intended to mean similar habitats "adjacent" (defined in the December 17 ACMP Document as "near but not necessarily touching") to the important habitat. It appears that under the proposed ACMP, any habitat adjacent to an area that has been identified as "important habitat," could not be designated important habitat itself, even if it was an entirely different habitat type with its own unique qualities. The adjacent habitat could also be "significantly more productive" and managed for some other important species, but still not be considered for important habitat designation due to its location adjacent to the important habitat.

As an example, in one ecosystem, a wetland, a tidal flat, and an estuary could all be adjacent to each other (under the state's existing definition of adjacent). As the regulations are currently written, if any one of those habitats were identified as "important habitat," then neither of the other ones could also be designated. In some cases, the value of the most productive habitat may be intrinsically linked to its physical relationship to another one or both of those other habitats.

As OCRM has proposed, the issues identified here concerning clarity and comprehensive management for coastal values can be satisfied by the state in several ways. The regulatory language used as the standard to designate important habitat must be clarified through regulatory revisions, or the state must provide sufficient definitions for its regulatory terms that they will be understood in the community of users, the scientific community, the districts and other affected interests. To ensure clarity and enforceabilty, OCRM prefers that these clarifications be made in regulations. Finally, subsection (9), which addresses important habitats, needs to be amended to incorporate effects language, as described in Enclosure I.

ENCLOSURE VI - GUIDANCE FOR COMPLETING THE ACMP AMENDMENT REQUEST

STATUS	REQUIREMENTS	COMMENTS
To be Determined	State must hold *at least* one public hearing on the proposed amendment as submitted to OCRM. 15 C.F.R. § 923.81(a)	This requirement could be satisfied by a State hearing(s) on the proposed amendment held concurrently with OCRM's public scoping meetings to initiate the NEPA process. OCRM believes that two public hearings are needed due to Alaska's geographic distances (e.g., one in Juneau and one in Anchorage).
To be Determined	Notice of the hearings and relevant agency materials must be provided at least 30 days prior to the hearings. 16 U.S.C. § 1457; 15 C.F.R. § 923.81(a).	Same as above
To be Determined	A copy of the public notice announcing the hearings must be submitted to OCRM. 15 C.F.R. § 923.81(b)(3).	Same as above
To be Determined	A summary of the oral and written comments presented at the hearings must be submitted to OCRM. 15 C.F.R. § 923.81(b)(4).	Same as above
Information Generally Sufficient	State CMPs are developed with the opportunity of full participation by CZMA stakeholders. 16 U.S.C. § 1455(d)(1).	The public participation discussion is generally adequate.
Information Generally Sufficient	Amendment requests must document the opportunities provided for the participation of interested public and private parties in the State's development and approval of the proposed amendment. 15 C.F.R. § 923.81(b)(5).	Same as above
Insufficient information	Describe the proposed change(s). 15 C.F.R. § 923.81(b)(1).	The ACMP request must describe the general objectives of the revisions (e.g., regulatory streamlining, concentrating CZM authority at the State level, limiting unnecessary State or local regulation, protecting specific coastal resources and uses) and how the new ACMP will continue to meet CZMA requirements. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. The ACMP request needs to provide a clear picture of the complete revised program, not just the individual changes to the program. This comment from OCRM's 11/4/04 letter was not completely addressed by the

		December 17 ACMP Document.
Insufficient information	The description must include the specific pages and text to be changed in the program document and/or legislation or regulations. 15 C.F.R. § 923.81(b)(1).	The amendment request needs to include a program document that is a complete stand-alone description of the new ACMP. This comment from OCRM's 11/4/04 letter was not completely addressed by the December 17 ACMP Document. Preface, para. 1, second sentence needs to be deleted. NOAA regulations *do* require a description of text to be changed in the program document. 15 CFR § 923.81(b)(1). Because Alaska is making so many changes, identifying every text change of the 1979 ACMP document would not be useful. In order to provide a clear description of the revised ACMP, a new program description is needed.
Insufficient information	Amendment requests must describe the enforceable policies added to, or removed from, the CMP. 15 C.F.R. § 923.81(b)(1).	Other coastal uses and enforceable policies from other state statutes and regulations need to be described to provide the comprehensive view of ACMP enforceable policies, e.g., Mining, Air, Land and Water, Habitat (from DNR/OHMP).
Insufficient information	The analysis of enforceable policies should include the mechanism (e.g., zoning, permit) by which the State ensures that the policies are legally binding under state law. OCRM's Program Change Guidance IV.A.1 (July 1996) (Guidance).	Same as above
Insufficient information	Amendment requests must explain why the change is necessary and appropriate. 15 C.F.R. § 923.81(b)(2). This includes a detailed analysis of the effects of the change on the approvability of the CMP. Guidance IV.A.2.	The amendment request needs to provide a more detailed analysis of why the change is necessary and appropriate. This analysis needs to describe the effects of the change on the approvability of the ACMP. This analysis should also describe how the changes in the coastal zone needs, problems, issues, or priorities described in pages 120-132 will be addressed by the amended ACMP. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Pages 171-184, Section 10.1, does not reflect the great diversity in the perceived nature of the problems with the ACMP and what changes were needed to improve it. While most affected interests would agree that improvements were necessary, there is great diversity in the perceived nature of the problems with the ACMP and what changes were needed to improve it. This section needs to be re-written to reflect this diversity of views. Also, the section describing those who opposed HB 191 was removed from the December 17 ACMP Document and should be replaced.

Insufficient information	Amendment requests must discuss changes in the coastal zone needs, problems, issues, or priorities resulting in or leading to the State's proposed CMP amendment. 15 C.F.R. § 923.81(b)(2).	The ACMP request lists some changes in coastal zone needs, problems, issues and priorities (Pages 120-132) but does not describe how these changes will be addressed by the amended ACMP (*See* comment on previous requirement). This description needs to be added to the document. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Page 186, para. 1 is overly broad in its criticisms; not everyone, including OCRM, would agree with the sweeping statements of problems with the ACMP. This paragraph should provide a more objective description of the ACMP issues and the description of the efforts made to fix some of these concerns regarding district enforceable policies and consistency review. This section should also be more objective in explaining why some of the ACMP changes have been made. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document.
Insufficient information	Amendment requests must identify any original ACMP approval findings that may need to be modified if the amendment request is approved. 15 C.F.R. § 923.81(b)(2).	The ACMP request needs to identify any original approval findings that may need to be modified if the amendment request is approved.

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The following matrix includes approval criteria where there is insufficient information in the December 17 ACMP Document to make a preliminary approval decision:

STATUS	REQUIREMENTS	COMMENTS
Insufficient information	Explain how land and water uses will be managed, and define enforceable policies and other governing authorities. 15 CFR § 923.11(a)(3).	The December 17 ACMP Document does not clearly explain how the uses subject to the ACMP will be managed under the enforceable policies and authorities that will govern whether and how uses will be allowed, conditioned, modified, encouraged or prohibited. The ACMP document needs to provide an objective narrative to clarify the meaning and purpose of each of the ACMP standards on pages 55-69. See Enclosures I-V. Pages 62-64, Section 5.2.10, Habitats, needs a companion narrative section which elaborates on this standard including describing the *state* policies and authorities it will use to manage wetlands, including mitigation policies, and how these will interface with the U.S. Army Corps of Engineers' section 404 permitting process. The respective roles and the interrelationship between the habitat policies of DNR's Office of Habitat Management and Permitting, the Policies of the AK Department of Fish and Game, and the revised ACMP Habitat policies, need to be described in the revised ACMP. As a related matter, pages 216-219, Subsection 10.4.12, the discussion regarding the removal of "water quality" from the habitats standard must be re-inserted. These are CZMA approvability issues. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. In addition, the discussion on pages 84-88, Section 5.3.8.10 needs to be expanded to explain why districts can only address habitat issues through the designation of important habitat - this is not clear in the regulations. See detailed comments in Enclosures IV and V. The ACMP document needs to specifically describe how mining activities are to be managed by the program. If the ACMP relies on DNR policies and authorities to manage mining in the coastal zone, these authorities needs to be included in the coastal program. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Although it is clear that DEC's Air, Land, and Water policies cannot be supplemented through additional ACMP review, the manner in which the core DEC policies are applied to Federal and state consistency review needs clarification and specificity. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See detailed comments in Enclosure I. Page 11, first full para. The first sentence should remove the term "selected." It should be revised to say something like, "Alaska developed a comprehensive program to meet the requirements of the CZMA . . . ." The CZMA requires that in order for a state to have an approved program it is required to develop a comprehensive program that meets the requirements of 306(d). See also 303(2) - (6) (setting forth the comprehensive list of objectives that a state program must address) and 304(12) (definition of management program is a "comprehensive statement . . . ."). This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document.

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Information Generally Sufficient	Include sufficient detail to enable affected parties to determine whether an area is designated an area of particular concern. 15 CFR § 923.21(d).	Page 140, Section 7.1, para. 2, item #3 should be clarified. This sentence, identifying "important habitat" designations as areas of particular concern, conflicts with the sentence on page 147, section 7.3, para. 3, stating that "important habitat" designations are "not included nor considered as formal designations of an area of particular concern that requires the establishment of boundaries or listing within an inventory."
Insufficient information	Inland boundary must include areas where uses are managed, areas of particular concern, waters under saline influence, salt marshes and wetlands, beaches, transitional and intertidal areas, and islands. 15 CFR § 923.31(a)(1) - (a)(7).	Pages 204-208, Subsection 10.4.1, regarding the definition of coastal waters. The state's analysis misapplies the CZMA definition of "coastal waters" in describing the coastal lands that should be managed. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. The ACMP document needs to clarify if the definition of "Direct and significant impact" includes impacts on anadromous fish. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See page 15, para. 1; page 87, para. 2 and 3; and page 207, para. 5. The December 17 ACMP Document does not appear to be proposing changes to the boundaries at this time. Future revisions to district programs may require boundary changes. However, some of the revised ACMP policies include language limiting their application to specific resource types or to activities which have a direct and significant impact on coastal waters. In the latter case, the state needs to clarify whether the policy applies to the entire coastal zone. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document.
Insufficient information	Identify the means by which the state proposes to exert control over the permissible uses, including a list of relevant constitutional provisions, laws, regulations, and judicial decisions. 16 USC § 1455(d)(2)(D); 15 CFR § 923.41(a)(1) and (b).	In addition, the CZMA does not authorize the state to regulate federal agencies. All policies must be drafted to apply to entities subject to state jurisdiction. Any policies that would refer to federal lands, federal waters or federal agencies and that are written in such a way that the policy can be interpreted to impose a state policy on the federal lands, waters or agencies need to be revised. For example, the definition of "person," in 11 AAC 114.990(32), cannot include the federal government or an entity of the federal government. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Page 12, para. 2, notes the importance of the local governments to coastal management in Alaska. The revised ACMP changes the local and public roles. The document needs a new section which provides a comprehensive description of the revised role of the districts. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See Enclosures I-V. Page 190, bullet 2, talks about excluding certain activities from consistency review. This is allowable for federal license or permit activities (where the state lists the federal authorizations it will review), but not for Federal agency activities under CZMA section 307(c)(1). A state cannot remove a Federal agency's

		obligation to provide a consistency determination when an activity will have reasonably foreseeable coastal effects. If a state wants to remove certain Federal agency activities from consistency review it must use one of the processes in NOAA's regulations, negotiate with the Federal agency and provide for public participation in that decision, e.g., general concurrences, de minimis activities, environmentally beneficial activities. Also, somewhere in the ACMP Program Description the distinction between "state consistency" and "federal consistency" needs to be clearly stated, and the relevant terms should be used throughout. As it is currently described in the document the process for each and the distinction between each is unclear. For example, every instance of "consistency" could be changed to "state consistency," which then, does not refer to federal consistency. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Page 191, para. 1, the DEC exception. The DEC "carve out" needs to be more clearly described for federal consistency purposes. See Enclosure I. The December 17 ACMP Document describes the general organization of the ACMP. However, the ACMP amendment document should provide a more detailed discussion regarding how the ACMP agencies operate and coordinate their operations. Page 196, Subsection 10.3.2, para. 2. This para. is confusing and needs to be described in greater detail, e.g., rather than just citing various state law sections, it needs to describe what those sections say. The Forest Resources and Practices Act exemptions are not clear - do they apply only to "state" consistency decisions and not to federal consistency decisions? If they apply to federal consistency, the exemptions can only apply to federal license or permit activities and not the Federal agency activities (as discussed earlier, states cannot remove the Federal agencies' obligation to provide a consistency determination for activities with reasonably foreseeable coastal effects). The meaning of the last two sentences regarding DEC are not clear and need more detailed explanations. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Page 126, bullet 2; page 198, Subsection 10.3.3, para. 1; and page 200, bullet 3. These three paragraphs mention CZMA section 307(f), although it is not clear why the state has referred to this section. Section 307(f) refers to federal, state and local laws that are developed pursuant to Clean Water Act (CWA) and Clean Airt Act (CAA) requirements and that such requirements are the water pollution control and air pollution control requirements of the state's coastal management program. This section does not cover all water quality or air quality related activities or policies a state or local government might develop, but only those *requirements developed pursuant to the CWA and CAA*. Those requirements developed pursuant to the CWA and CAA are automatically part of the state's management program, after providing notice to the public and OCRM (and assuming OCRM agrees that the state policy is developed "pursuant to a CWA or CAA

		requirement," as opposed to some other related CWA or CAA program that is not required). This section does not limit such requirements to state standards, but also includes local standards. This section also does not preclude the state or local governments from including in a state's coastal management program other water or air related policies or programs that are not "requirements developed pursuant to the acts" and are not "pollution control requirements." OCRM interprets "pollution control requirements" to apply to water quality or air quality standards that are developed directly from a CWA or CAA requirement. Thus, for example, a stream setback policy to protect salmon habitat by decreasing nonpoint runoff and to maintain the integrity of the stream bank would likely not be a "water pollution control requirement" covered under CZMA section 307(f). This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Page 199, para. 1, is confusing. It appears to say the following. First, for *state* consistency/permit decisions, DEC permits establish compliance for areas within DEC's jurisdiction. This is OK. Second, there is no DEC authorization for projects on federal lands or for Federal agency activities *and* DEC policies are not applied to such federal consistency reviews. This is not clear. If a Federal agency activity or a non-federal entity proposing a project on federal land will have impacts on coastal air, land or water quality, then the applicable DEC policies must be applied through the state's federal consistency review. This may be contradicted by the third bullet on page 200, but the two conflicting paragraphs are not clear. Third, the paragraph says that DEC processes are not tied to federal or state consistency review deadlines. Unless the state law says that DEC must complete its decisions prior to the CZMA federal consistency deadlines, this is problematic. Otherwise, state consistency and federal consistency decisions will always be delayed pending DEC decisions. Page 126, bullet 7 and page 201, bullet 5 do not address the issue because 11 AAC 110.010(b)(2), as cited in the bullet, does not address the issue (and it is also not clearly evident from the other subsections of 110.010). Page 129, para. 1, last sentence and page 202, para. 1, last sentence says that DEC must still act within the timeframes established by NOAA's federal consistency regulations, but there is no discussion as to how this will occur. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Page 135, para.3 and page 203, para 1 says that the ABC list was "incorporated by reference" into the ACMP. If this statement is meant to apply to NOAA's approval of the ABC list, it must be deleted. State policies, statutes, regulations, etc., cannot be incorporated by reference into a state's federally approved coastal management program. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Page 204, Subsection 10.3.8, para. 1. This paragraph should state that this only applies to state consistency/permit decisions and not to state decisions for federal consistency. The authority to terminate inactive project review files under 11 AAC 110.810 cannot apply to federal consistency reviews. Once the CZMA review periods begin, the state cannot alter, stop or stay those review periods, except as provided for

		in NOAA's federal consistency regulations. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Page 212, para. 4, last two sentences should be deleted. The applicant's ability to request a suspension of the 90-day review period is not an administrative tool for the state or Federal agency to extend the review period, as suggested by the state. If the state or Federal agency need more time, but the applicant does not agree, then there is no extension. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Pages 66-69, Section 5.2.13, and pages 219-223, Subsection 10.4.14, Mitigation Sequencing Standard, does not adequately describe the ACMP mitigation standard in laymen's terms. While it is clear that a no net loss of impacted resource is not usually required, it is not clear what the "bottom line" is on mitigation. The statement on page 68, para. 3 regarding the CZMA and "no net loss" is a misstatement and should be deleted - there is nothing in the CZMA that prohibits the creation of "no net loss" policies as they relate to critical areas. The statement on page 69, para. 1 indicating that mitigation would be "rare" is not logical, given that avoidance and minimization actions are limited by "practicable" modifier, and needs to be clarified. In addition the text at page 86, needs to be revised to clearly state what portions or aspects of the existing Juneau and Anchorage wetland management plans may be incorporated or used under the ACMP and the rationale for these positions. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Pages 61-62, Subsection 5.2.8 and pages 213-215, Subsection 10.4.10 subsistence standard, see detailed comments in Enclosures I, II, and III regarding the ACMP subsistence use policy. The discussion on page 62 regarding subsistence also needs revision. For example, it is not clear why mitigation of impacts to subsistence impacts is not required, and how allowing for "minimizing" impacts is preferable. "Minimizing" impacts needs to be explained. It is unclear from the discussion how minimization is stronger than a combination of minimization and mitigation. Further, if someone is authorized to minimize impacts there should be mitigation of those impacts, as is required of other activities covered under the ACMP. Also note that the discussion overstates the benefit of the "avoid or minimize" standard as this phrase modified by "practicability" factors in the rule definitions; thus the protection of subsistence use is not as strong as the text suggests. It is also not clear if a district could develop a subsistence policy that includes mitigation. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See detailed comments in Enclosures I, II, and III regarding the ACMP subsistence use policy. Page 233, Subsection 10.5.6.2. This section states that district policies may not apply to projects located outside a designated area, even though the project will affect the designated area. This limits the ability to use

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		the district policy through the CZMA federal consistency provision to federal projects located outside the designated area. For example, if a district has a subsistence policy that applies within a designated subsistence area within the district, the state may not use the district's policy when the state reviews an oil and gas project located within federal waters. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See detailed comments in Enclosures I and III.
Insufficient information	Technique A - Local implementation - State establishment of criteria and standards for local implementation, subject to administrative review and enforcement. 16 USC § 1455(d)(11)(A).	See detailed comments in Enclosures II regarding Technique A and B implementation.
Insufficient information	Technique A - Ability to ensure coastal programs will be developed pursuant to the State's standards and criteria, or failing this, that the CMP can be implemented directly by the State; 15 CFR § 923.42(b)(3)	See detailed comments in Enclosures II regarding Technique A and B implementation.
Insufficient information	Technique A - Procedure where the State reviews and certifies the local program's compliance with State standards and criteria including opportunities for the public and governmental entities (including Federal agencies) to participate and make their views known in the development of local programs; and 15 CFR § 923.42(b)(4)	Pages 69-80, Sections 5.3.1-5.3.7. District Enforceable Policies. These sections need to be comprehensively revised to adequately address the criteria which affect district policy development as described in Enclosure IV. It needs to be clear what policies the districts can write and in what areas the state believes that state law and regulation precludes districts from developing policies. The concept that the new ACMP policies change the manner in which district habitat, subsistence and other policies apply, needs to be more clearly defined. A legal interpretation of HB 191 supporting the state's view on this matter is needed. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See detailed comments in Enclosure IV. As was exhibited at the recent district conference, there is a high degree of uncertainty regarding the procedures and standards that the districts must meet in developing the enforceable policies of their programs. As a result, OPMP recorded a list of substantial policy issues and committed to responding within a reasonable time period. The ACMP document must provide clear criteria and standards for district policy development to the districts, and affected interests. A set of revised model district policies, similar to those developed by the state during the legislative discussion on HB 191, would help illustrate how the districts may function within the revised ACMP. This comment from OCRM's 11/4/04 letter was not completely addressed by the December 17 ACMP Document.

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		See detailed comments in Enclosure IV regarding the content of coastal district plans.
Insufficient information	Technique A - Ability to assure implementation and enforcement of a local program once approved. 15 CFR § 923.42(b)(5).	The revised submittal needs to address the specific requirements of Technique A. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See detailed comments in Enclosures II regarding Technique A and B implementation.
Insufficient information	Technique B - State must have requisite direct authority to plan and regulate land and water uses subject to the CMP. 15 CFR § 923.43(b).	See sections above for comments on specific state statutes. Also, see detailed comments in Enclosures II regarding Technique A and B implementation.
N/A	Technique C - 15 CFR § 923.44	
Insufficient information	Incorporate by reference or otherwise all requirements established by the Clean Water Act (CWA), or the Clean Air Act (CAA), or established by the Federal Government or by any state or local government pursuant to such Acts. 16 USC § 1456(f); 15 CFR § 923.45.	Page 88, Subsection 5.3.8.11, The statement regarding the legality of district policies to address air and water quality standards is unclear, as it relates to the OCRM approval under the CZMA. The incorporation of the state standards required by the CWA or the CAA, does not limit state's ability to include other water quality measures, e.g., non point source BMPs or setbacks in its CZM program. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See detailed comments in Enclosure IV regarding the content of coastal district programs. In addition, it is not clear how HB 191 affects the ability of districts to write "erosion" policies to address water quality. The discussion on page 89 is even more confusing with the references to the allowability of addressing issues which are not addressed in the utilities and transportation route policies. This appears to conflict with the "Flow From" concept. As we have noted before, this confusion has existed through out the development of the rules and needs legal clarification. Also, the statement at the bottom of page 65 is incorrect - the requirements of the CWA and CAA are incorporated into state programs, not the federal acts themselves. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. See detailed comments in Enclosure IV regarding the content of coastal district programs.
Insufficient information	State must be organized to implement the CMP, and the organizational structure must be fully described. 16 USC § 1455(d)(7) and (d)(2)(F); 15 CFR §923.46.	Chapter 3 describes the general organization of the ACMP; Subsection 5.1.1 discusses the statutory duties of OPMP; Subsection 5.1.2 describes the mission statements of the other DNR divisions; Subsection 5.1.3 and Chapter 6 describe the role of DEC; Subsection 5.1.4 lists the mission statement of the Department of Fish and Game; and Subsection 5.1.5 lists the mission statement of the Department of Commerce, Community, and Economic Development. However, The various divisions of DNR need to be described in terms of their roles and responsibilities, and their relationship to OPMP.

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		The ACMP document needs to describe the roles of AK Fish and Game vs. OHMP, as it relates to the implementation of AK habitat policies. The role of the Department of Fish and Game in the ACMP, as modified by the Governor's Executive order, needs to be described. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document. Describe the relationship of administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act. 15 CFR §923.46.
Information Generally Sufficient	When developing and adopting a CMP provide an opportunity for full participation by interested public and private parties. 16 USC § 1455(d)(1).	The public participation discussion in Chapter 5 is generally adequate.
Insufficient information	List or summary of coordination contacts. 15 CFR § 923.56(b)(2).	The December 17 ACMP Document does not address this requirement.
Insufficient information	Identify any conflicts with plans of a regulatory nature that are unresolved at the time of program submission. Also identify the means used to resolve these conflicts. 15 CFR § 923.56(b)(3).	The December 17 ACMP Document does not address this requirement.
To be Determined	At least two public hearings during the course of program development, one of which will be on the total scope of the CMP, covering the substance and content of the proposed CMP. 16 USC § 1455(d)(4); 15 CFR § 923.58(a).	This requirement could be satisfied by a State hearing(s) on the proposed amendment held concurrently with OCRM's public scoping meetings to initiate the NEPA process. OCRM believes that two public hearings are needed due to Alaska's geographic distances (e.g., one in Juneau and one in Anchorage).
To be Determined	Provide a minimum of 30 days public notice of hearing dates and locations. 15 CFR § 923.58(b).	Same as above
To be Determined	Make available for public review, at the time of public notice, all agency materials pertinent to the hearings. 15 CFR § 923.58(c).	Same as above

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To be Determined	Include a transcript or summary of the public hearing(s). 16 USC § 1455(d)(4); 15 CFR § 923.58(d).	Same as above
Insufficient information	Contact relevant federal agencies, allow for their full participation, and adequately consider their views. 16 USC § 1456(b); 15 CFR § 923.51(a) and (d)(1).	The ACMP document must expand on Chapter 8 and describe how the state adequately considered the views of Federal agencies according to 16 USC § 1456(b); 15 CFR § 923.51(a) and (d)(1). This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document.
Insufficient information	Provide for Federal agency input on a timely basis as the program is developed. 15 CFR § 923.51(d)(2).	Same as above
Insufficient information	Solicit statements from the head of Federal agencies as to their interpretation of the national interest in the planning for and siting of facilities which are more than local in nature. 15 CFR § 923.51(d)(3).	Same as above
Insufficient information	Summarize the nature, frequency, and timing of contacts with relevant Federal agencies. 15 CFR § 923.51(d)(4).	Same as above
Insufficient information	Evaluate Federal comments received during the program development process. 15 CFR § 923.51(d)(5).	Same as above
Insufficient information	Public notice procedures for Federal License and permit activities and, where appropriate, OCS plans. 15 CFR §§ 930.42, 923.53(a)(4), 930.61, 930.62, 930.78.	The ACMP document needs to clarify the public notice procedures to be used for certifications submitted for Federal agency activities, Federal License and permit activities and, where appropriate, OCS plans pursuant to 15 CFR §§ 930.42, 923.53(a)(4), 930.61, 930.62, 930.78. This comment from OCRM's 11/4/04 letter was not addressed by the December 17 ACMP Document.

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There is sufficient information in the December 17 ACMP Document to make a preliminary approval decision with regard to the following requirements:

- Define permissible land and water uses and identify uses subject to the CMP. 16 USC § 1455(d)(2)(B); 15 CFR § 923.11(a)(1) and (2).
- Identify land and water uses of regional benefit and assure that local land and water use regulations do not restrict such uses. The methods used by the State must be consistent with the control techniques employed by the State. 16 USC § 1455(d)(12); 15 CFR § 923.12(a) and (b).
- Include a process for anticipating the management of the impacts from energy facilities by: Identifying those facilities likely to locate in or significantly affect the coastal zone; Including procedures for assessing the suitability of sites for energy facilities; Identify enforceable policies, authorities and techniques for managing energy facilities; and Identifying how interested and affected parties will be involved in the planning process. 16 USC § 1455(d)(2)(H) and 15 CFR § 923.13
- Inventory and designation of areas of particular concern within the coastal zone. 16 USC § 1455(d)(2)(C); 15 CFR § 923.21(a).
- Provide guidelines including purposes, criteria, and procedures for nominating areas of particular concern when local governments, other state agencies, federal agencies and/or the public are involved in the process of designating such areas. 15 CFR §923.21(c).
- Describe the nature of the concern, why the area was designated, and how the CMP addresses and resolves the concerns. 15 CFR § 923.21(e) and (f).
- Include guidelines on priorities of uses in areas of particular concern, including guidelines on uses of lowest priority. 16 USC § 1455(d)(2)(E); 15 CFR § 923.21(g).
- Define "beach" in the broadest definition allowable, and include a process for protection, and access to, public beaches. 16 USC § 1455(d)(2)(G); 15 CFR § 923.24(a) and (d).
- Include a procedure for assessing public beaches and other areas requiring access or protection. 15 CFR § 923.24(c).
- Identify and describe enforceable policies and other authorities used to provide shoreline access and protection. 15 CFR § 923.24(e).
- Include a planning process, and describe the enforceable policies, funding techniques, and other techniques for assessing the effects of, and studying and evaluating ways to control or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion including potential impacts of sea level rise. 16 USC § 1455(d)(2)(I); 15 CFR § 923.25(a) and (c).
- Include procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values and the criteria for such designations. 16 USC § 1455(d)(9); 15 CFR § 923.22.
- Inland boundary must be presented in a manner that is clear and exact enough to permit determination of whether property or an activity is located within the management area. 15 CFR § 923.31(a)(8).
- For Atlantic or Pacific States, the seaward boundary is the outer limit of state title and ownership. 15 CFR § 923.32(a)(1).
- Map, describe, and reference water areas that require a more exact delineation. 15 CFR § 923.32(a)(2).
- Exclude lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers, or agents. 15 CFR § 923.33(a).
- Describe, list, or map lands or types of lands owned, leased, held in trust or otherwise used solely by Federal agencies. 15 CFR § 923.33(a).
- The state chosen CMP agency must have authority to manage the coastal zone. 16 USC § 1455(d)(10); 15 CFR § 923.41(a)(2).
- Such authority includes the power to administer land use and water use regulations to control development to ensure compliance with the CMP, and to resolve conflicts among competing uses. 15 CFR § 923.41(a)(2)(i).
- Such authority includes the power to acquire fee simple and less than fee simple interests in land, waters, and other property to achieve conformance with the CMP. 15 CFR § 923.41(a)(2)(ii).
- Such authority includes the power to acquire fee simple and less than fee simple interests in land, waters, and other property to achieve conformance with the CMP. 15 CFR § 923.41(a)(2)(ii).
- Designate a single State agency to receive and administer grants for implementing the CMP. 16 USC § 1455(d)(6).

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- State agency must have fiscal and legal ability to administer funds, enter into arrangements with participating agencies, monitor and evaluate coastal resources, and justify adherence or deviation from the CMP. 15 CFR § 923.47(a)(1) and (2).
- The Governor must sign a transmittal letter stating the Governor has reviewed and approved the CMP and any changes, designated a single State agency, attests the State has the authority to implement the CMP, and the State is organized to implement the CMP. 15 CFR § 923.48(a) - (d).
- CMP agency must make available to the public, information regarding program design, content, and status. 15 CFR § 923.55(a).
- List public and private agencies, authorities, and organizations likely to be affected by the CMP. 15 CFR § 923.55(b).
- Indicate the nature of major comments received from interested or affected parties and the State's response. 15 CFR § 923.55(c).
- Hold public meetings and workshops during the course of program development at accessible locations and convenient times. 15 CFR § 923.55(d).
- Identify and, coordinate with, plans developed by local, areawide, and interstate government agencies existing on January 1 of the year in which the CMP is submitted. 16 USC § 1455(d)(3)(A); 15 CFR § 923.56(a) and (b)(1).
- Include a mechanism for continuing consultation and coordination with local, interstate, regional, and areawide agencies within the coastal zone to assure full participation of local governments and agencies in carrying out the purposes of the CZMA. 16 USC § 1455(d)(3)(B); 15 CFR § 923.57(a).
- Consider the national interest involved in planning for, and managing the coastal zone, including the siting of facilities of greater than local significance such as energy facilities. 16 USC § 1455(d)(8); 15 CFR § 923.52(a).
- Describe the national interest in the planning and siting of such facilities, and indicate the sources relied upon. 15 CFR § 923.52(c)(1) and (2).
- Indicate how and where the national interest is considered in the CMP. 15 CFR § 923.52(c)(3).
- In the case of energy facilities, indicate the consideration given any national or interstate energy plans or programs. 15 CFR § 923.52(c)(3).
- Describe the process for continued consideration of the national interest in the planning for and siting of facilities. 16 USC § 1455(d)(8); 15 CFR § 923.52(c)(4).
- Whether the designated state agency, or a single other agency, will handle consistency review; 16 USC § 1456(c); 15 CFR §§ 923.53(a)(1), 930.6
- List of Federal license or permit activities subject to review; 15 CFR §§ 923.53(a)(2), 930.53
- States anticipating coastal effects from OCS development must list OCS plans describing Federal license and permit activities; 15 CFR §§ 923.53(a)(3), 930.74

ENCLOSURE VIII SCHEDULE/TIMING ISSUES

Before discussing scheduling issues, it is important to understand the state's deadline of July 1, 2005. Below is OCRM's understanding of the deadline and alternatives for addressing its consequences.

The state's July 1, 2005, deadline is derived from sections of HB 191 and the new ACMP regulations. DNR was charged with adopting new ACMP regulations that are "effective" no later than July 1, 2004. HB 191, Sec. 46(a). ACMP regulations previously approved by OCRM (the "old ACMP regulations"), 6 AAC 80 and 6 AAC 85, remain "effective" until the new ACMP regulations are effective. HB 191, Sec. 46(b). (6 AAC 80 are the ACMP standards, which would be replaced by 11 AAC 112; and 6 AAC 85 are the guidelines for district programs, which would become 11 AAC 114.) However, the old ACMP regulations, 6 AAC 80 and 6 AAC 85, are annulled on July 1, 2005, even if new ACMP regulations are not "effective." HB 191, Sec. 49. District plans and their enforceable policies remain in effect until July 1, 2006. HB 191, Sec. 46(c). Within one year of the effective date of new ACMP regulations, or July 1, 2005, whichever date is later, districts must submit new plans for DNR review and approval. *Id.* Under 11 AAC 112.010 the new ACMP regulations, adopted July 1, 2004, and amended October 29, 2004, do not apply to consistency reviews (state or federal consistency reviews) until OCRM has approved the regulations.

OCRM understands that the result of these state statutory and regulatory provisions is that, by combining the requirements of HB 45, 46(a) and 49, DNR has concluded that the state will have no enforceable ACMP policies on July 1, 2005. This is because the old ACMP standards (6 AAC 80) and the old district program guidelines (6 AAC 85) will no longer be state law and the new ACMP regulations adopted on July 1, 2004, and amended October 29, 2004, would not be approved by OCRM by July 1, 2005 and therefore not "effective." Therefore, after July 1, 2005, the federally approved ACMP would consist of only the district plans and district enforceable policies already approved by OCRM. However, by rule, 11 AAC 112.010, DNR stayed the application of only the new ACMP standards (11 AAC 112) until OCRM approval is complete. If 11 AAC 112.010 were repealed or modified, the new ACMP standards may be applicable for state purposes, regardless of the July 1, 2005, deadline, but not for CZMA purposes. The state has not stayed the application of the new district program guidelines (11 AAC 114) or the new consistency procedures (11 AAC 110). The district plans and policies could be used by DNR for its state and federal consistency reviews. The district plans and policies remain in effect until July 1, 2006. As a matter of state law, the state met the requirement in HB 191, Sec. 46(a) to have "effective" regulations in place by July 1, 2004. In any case, OCRM does not see that the entire ACMP "sunsets" on July 1, 2005.

OCRM recommends the state continue to rely on the old ACMP regulations previously approved by OCRM, and not just district plans and policies, during the completion of the ACMP amendment approval process. This would require the state legislature must either remove or extend the July 1, 2005, deadline in HB 191, Sec. 49. Removing or extending the July 1, 2005, deadline and continued reliance on the old ACMP standards while the ACMP is in transition is the optimal method of addressing the problems presented by the deadline.

Alternatively, the state may remove or amend the language in 11 AAC 112.010 that precludes the application of the new ACMP standards until OCRM approval. This would make 11 AAC 112 effective as a matter of state law, but not applicable to ACMP federal consistency reviews. If the state amends the ACMP regulations and the ACMP document sufficiently to allow OCRM to issue preliminary approval, then the state would be able to expend CZMA funds to implement the new ACMP regulations for a six-month period. However, the new regulations could not be used for federal consistency purposes. *See* 16

USC § 1455(e)(3)(B). Federal consistency decisions would be based on the old ACMP regulations (if the July 1, 2005, deadline were removed allowing continued use of the old ACMP regulations), or the previously approved district plans and policies if the July 1, 2005, deadline is not extended.

If the July 1, 2005, deadline is not altered and the OCRM-approved ACMP contains only the enforceable policies in the district plans, this would have long-term approvability consequences for the ACMP, particularly under NOAA's "Technique A" requirements for local government implementation of a state's coastal management program, 15 CFR § 923.42, as discussed in Enclosure II. However, while the ACMP amendment is being developed and is in transition toward approval, OCRM believes the ACMP could continue to receive CZMA grants, fund efforts to revise the ACMP and district plans, and use the districts' enforceable policies for state and federal consistency reviews. Of course, if the ACMP amendment is not approved, the use of only the district plans would be insufficient to sustain a federally approved coastal management program.

Another important timing issue is the deadline for the completion and submission of new district plans. All district plans are scheduled to be submitted to DNR on July 1, 2005, and approved by DNR by July 1, 2006, when the old district plans sunset. The development of these new plans, however, has been hampered by the lack of consistent and clear guidance on the scope and content of district plans. In fact, the ACMP regulations were revised October 29, 2004, and may be revised again this spring. Therefore, OCRM recommends that the statutory deadline for submitting district plans be amended to allow districts time to develop plans based on the final ACMP approval requirements have been completed, pursuant to HB 191, Sec. 47(a), and affected parties have a clear understanding of the districts' role in the ACMP.

Tentative schedule is on next page.

Tentative Schedule

The time periods below are estimates and depend on when documents are submitted and whether OCRM determines the state has satisfied the approvability criteria of CZMA section 306(d) and 15 CFR part 923. The schedule starts when OCRM receives DNR's response to this letter. The time periods are an estimate after each preceding time period. Assuming time period 0 starts in February, OCRM anticipates a decision date around December 31, 2005.

Time Period (TP)	Duration	Action
0		OCRM receives from DNR proposed approvability/ regulatory changes and revised ACMP document, in response to this letter.
1	4 weeks after TP 0 Action	OCRM determines whether draft proposed regulatory changes and revised document meets CZMA approvability requirements and the revised ACMP document is sufficiently clear to be the basis of preliminary approval and NEPA scoping.
2	1 to 2 weeks after TP 1 Action	Assuming OCRM concurs with DNR's proposed changes, DNR publishes its notice of proposed rulemaking with the changes necessary to address approvability issues.
3	1 to 2 weeks after TP 2 Action	DNR publishes its 30-day notice for its CZMA section 306(d)(4) hearing and OCRM notices the NEPA scoping meetings.
4	4 to 6 weeks after TP 3 Action	OCRM conducts NEPA scoping meetings simultaneously with Alaska's 306(d)(4) hearings in Anchorage and Juneau, and possibly other outlying areas.
5	2 to 4 weeks after TP 4 Action	ACMP final regulatory changes are published by DNR and provided to OCRM.
6	2 to 3 weeks after TP 5 Action	OCRM determines if the ACMP final rule still meets CZMA approvability criteria (if proposed rule is accepted by OCRM and the final rule does not have substantive changes, the OCRM will accept final rule) and OCRM issues preliminary approval decision if appropriate.
7	4 to 8 weeks after TP 6 Action	OCRM issues DEIS and schedules hearings on DEIS.
8	2 to 8 weeks after TP 7 Action	Public comment period on DEIS and OCRM holds hearings on DEIS (assumes public comment period of 60 days).
9	8 to 16 weeks after TP 8 Action	OCRM issues FEIS and final decision approving or denying revised ACMP

ENCLOSURE IX LEXICON FOR TERMS USED IN OCRM'S LETTER AND ENCLOSURES

This enclosure defines various terms used throughout OCRM's letter and enclosures. OCRM is providing this lexicon to ensure that all parties have the same understanding of CZMA and ACMP terms, procedures and requirements.

ACMP: The Alaska Coastal Management Program as proposed to be amended by DNR/OPMP.

coastal area(s): The coastal areas are described in the ACMP and are the *geographic location descriptions (GLDs)* outside Alaska's coastal zone (on both state and federal lands and waters), pursuant to NOAA regulations at 15 CFR § 930.53(a). The coastal area is *not* the coastal zone. Federal lands within the boundaries of the state's coastal zone are automatically a "coastal area," or GLD, pursuant to 15 CFR § 930.53(a)(1).

coastal zone: The coastal zone is described in the ACMP pursuant to 15 CFR part 923, subpart D and is the land and water area subject to the programs and policies of the federally approved ACMP. The coastal zone extends seaward to the extent of state jurisdiction (3 nautical miles) and varies in distance landward.

CZMA: The federal Coastal Zone Management Act of 1972, as amended. 16 USC §§ 1451-1465.

consistency certification: A statement certifying that a proposed federal license or permit activity complies with the enforceable policies of a state's federally approved CZMA program and will be conducted in a manner consistent with such program. A non-federal applicant for a required federal license or permit provides the state CZMA agency with a consistency certification, pursuant to 15 CFR part 930, subpart D, if: (1) the federal license or permit activity is included on the state's federal consistency list and is located within the coastal zone; (2) the federal license or permit activity is included on the state's federal consistency list, the activity is located outside the coastal zone and the activity is located within a geographic location described in the state's CZMA program (a "GLD"); or (3) OCRM approves the state's request to review the activity as an unlisted activity, because the federal license or permit activity is not included on the state's federal consistency list or because a listed activity is located outside the coastal zone and not within a GLD.

consistency determination: A statement, supported by accompanying information, that a federal agency activity will be consistent to the maximum extent practicable with the enforceable policies of a state's CZMA program. A federal agency proposing an action, regardless of the location of the proposed federal action, provides the state CZMA agency with a consistency determination, pursuant to 15 CFR part 930, subpart C, if the federal agency determines its activity will have a reasonably foreseeable effect on a state's coastal uses or resources.

consistency decision: The state CZMA agency's concurrence or objection with a consistency certification or consistency determination. Only the lead state CZMA agency may issue a consistency decision. However, the state CZMA agency coordinates its consistency decision with other state agencies and local governments that are part of the state's CZMA program, and provides for public input into its consistency decision. The lead state CZMA agency for the ACMP is DNR/OPMP. OPMP makes all federal consistency decisions for the ACMP applying all applicable ACMP enforceable policies, including district policies.

designated area (DA): An area within district boundaries, described in a district plan, in which subsistence use is an important use of coastal uses or resources. Districts may also develop subsistence use policies for the DA in addition to the state's subsistence policy, pursuant to ACMP requirements. For the same reasons that enforceable policies cannot be written to apply to federal agencies or federal lands and waters, the state or a district cannot establish designated areas for federal lands or waters. Rather, designated areas must be created to apply only to areas within the state's jurisdiction and to the uses or resources of the state's coastal zone. The state and local policies and designated areas can then apply to activities on federal lands or waters through the ACMP's federal consistency review authority.

district: A district includes various forms of local government in Alaska that contain a portion of the coastal area of the ACMP.

district plan: In order for districts to participate in the ACMP, they must develop a district plan consistent with Alaska Statute 46.40.030 and ACMP regulations. A district cannot have a DA or district subsistence use policies unless it first has a district plan approved by the state.

DNR: Alaska's Department of Natural Resources.

enforceable policy: An enforceable policy is a state or local law, regulation, or policy that is legally binding on the citizens of the state. *See* CZMA section 304(6a); and 15 CFR § 930.11(h). Legally binding means that the policy must be applied through a state or local enforceable mechanism, such as a state permit program, local ordinances, a state law requirement that state agencies apply the policy in their decisions, etc. An enforceable policy must only apply within state jurisdiction – it cannot be enforceable if it applies to federal lands or federal agencies, unless authorized by federal law other than the CZMA. (The policy is then applied to federal agencies and activities on federal lands through federal consistency.) Before a state's enforceable policy can be applied through federal consistency, OCRM must approve the enforceable policy and any changes to the enforceable policies.

federal agency activity: An action proposed by a federal agency that will have a reasonably foreseeable coastal effect on a state's coastal uses or resources. For example, mineral lease sales by the Bureau of Land Management or the Minerals Management Service, timber sales by the Forest Service, dredging by the Army Corps of Engineers. Federal agency activities use the procedures at 15 CFR part 930, subpart C. The procedures for federal license or permit activities at 15 CFR part 930, subpart D, do not apply to federal agency activities.

federal consistency: Federal consistency is the CZMA requirement that federal actions that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone (also referred to as coastal uses or resources, or coastal effects) must be consistent with the enforceable policies of a coastal state's federally approved coastal management program. There are four basic types of federal actions: federal agency activities, federal license or permit activities, outer continental shelf (OCS) plans, and federal financial assistance to state and local governments. *See* http://coastalmanagement.noaa.gov/czm/federal_consistency.html for more information on federal consistency.

federal consistency list(s): States list in their federally approved CZMA programs the federal actions that are important to a particular state. Federal consistency lists must be located in one place in the state's CZMA program document or regulations, not in district plans. Federal consistency lists are

recommended for federal agency activities, but are not required. For federal agency activities, the activity is subject to state federal consistency review if the activity will have coastal effects, regardless of location of the activity or whether the activity is listed in the state's coastal management program. State federal consistency lists are *required* for federal license or permit activities under 15 CFR part 930, subpart D. A listed federal license or permit activity proposed within the coastal zone is automatically subject to state federal consistency review.

federal lands and waters and excluded federal lands: Federal lands and waters are those areas owned or controlled by the federal government and are outside state jurisdiction. The CZMA does not grant states any regulatory authority over federal lands or waters, but does give states federal consistency review authority over federal actions on federal lands or waters that have coastal effects. Excluded federal lands means that federal lands within the boundaries of a state's coastal zone are not part of the coastal zone and are not subject to state regulatory authority. Excluded federal lands are not, generally, relevant for federal consistency purposes.

federal license or permit activity: An activity proposed by a non-federal entity applying for a required federal license or permit that is subject to 15 CFR part 930, subpart D, including the requirements for listed activities, unlisted activities and GLDs as discussed in this document. For example, applications for Army Corps of Engineers Clean Water Act section 404 permits or Rivers and Harbor Act section 10 permits, hydroelectric licenses from the Federal Energy Regulatory Commission, approval of airport layout plans by the Federal Aviation Administration. Approval of OCS oil and gas plans by the Minerals Management Service is a form of federal license or permit, but covered under a separate section of NOAA's regulations: 15 CFR part 930, subpart E.

geographic location description (GLD): A GLD is a specific geographic area *outside* the state's coastal zone (on state or federal lands or waters) that is described in the state's federally approved CZMA program. A GLD is used only for areas outside the state's coastal zone when a state wants to subject listed federal license or permit activities to automatic federal consistency review, rather than seek case-by-case permission from OCRM to review a federal license or permit activity. *See* 15 CFR § 930.53(a). A GLD is not an extension of a state's coastal zone and is not a designated area (DA) under an ACMP district plan. Under the ACMP, *coastal areas* are GLDs for purposes of reviewing listed federal license or permit activities. While GLDs may be proposed by districts, the GLD is not effective until OPMP describes the GLD in the ACMP program document or state regulations, in conjunction with the ACMP's federal consistency list for federal license or permit activities, and OCRM approves the new GLD pursuant to the program change regulations at 15 CFR part 923, subpart H. GLDs should be limited in scope to those areas where federal license or permit activities are expected to have coastal effects. *GLDs are not determinative for the application of federal consistency to federal agency activities under 15 CFR part 930, subpart C.*

NOAA: The National Oceanic and Atmospheric Administration, within the U.S. Department of Commerce.

OCRM: The Office of Ocean and Coastal Resource Management, within NOAA's National Ocean Service. OCRM administers the CZMA.

OPMP: Alaska's lead CZMA agency, DNR's Office of Project Management and Permitting.

subsistence use and subsistence policy: Subsistence use is defined in Alaska to include the customary and traditional uses of fish and game in Alaska's rural areas. If a person moves into a rural area and adopts that way of living for their own, then that person, whether Alaska Native or non-Native, may legally fish and hunt for subsistence. Pursuant to international treaties and federal law, only Alaska Natives may hunt marine mammals, such as seals, whales, polar bears, and sea otters. The ACMP's proposed subsistence use policy is 11 AAC 112.270, stating "a project within a subsistence use area designated under 11 AAC 114.250(g) must avoid or minimize impacts to subsistence uses of coastal resources." The subsistence use policy does not become enforceable until OPMP approves a district's plan and a DA within the district and OCRM approves the district plan and DA. Once approved, the state's and district's subsistence use policy(ies) would apply to a federal action affecting the subsistence use covered by the DA, as described in enclosure III.

Technique A, B and C: State coastal management programs must implement their programs using any combination of three mechanisms: (1) state establishment of criteria and standards for local implementation—Technique A, 15 CFR § 923.42; (2) direct state land and water use planning and regulation—Technique B, 15 CFR § 923.43; or (3) state review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C, 15 CFR § 923.44.